S. HRG. 103–309

REAUTHORIZATION OF THE HAZARDOUS MATERIALS TRANSPORTATION UNIFORM SAFETY ACT OF 1990

Y 4. C 73/7: S. HRG. 103-309

Reauthorization of the Hazardous Ma... NG

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

JULY 21, 1993

Printed for the use of the Committee on Commerce, Science, and Transportation

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REAUTHORIZATION OF THE HAZARDOUS MATERIALS TRANSPORTATION UNIFORM SAFETY ACT OF 1990

WEDNESDAY, JULY 21, 1993

U.S. SENATE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION OF THE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m., in room SR–253, Russell Senate Office Building, Hon. J. James Exon (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Donald M. Itzkoff, senior staff counsel; and Gerri Lynn Hall, minority senior professional staff member.

OPENING STATEMENT OF SENATOR EXON

Senator EXON. The subcommittee will come to order. This morning the Surface Transportation Subcommittee will consider the reauthorization of the hazardous materials transportation safety programs carried out by the Department of Transportation.

All of us recognize that the transportation of chemicals, industrial waste, and other hazardous products plays an important role in our economy. When unforeseen forces such as the still raging floodwaters in the Midwest disrupt our national traffic flows of hazardous materials and other freight, shippers and businessmen everywhere in the Nation feel the impact.

I should point out that given the nearly one-half million hazardous materials transportation—hazmat—shipments transported every day by truck and by rail, the overall safety record in this area is encouraging and noteworthy. But every year on the average, thousands of unintentional releases do occur; 400 people are injured, and 8 to 10 persons die as a result of hazmat incidents. The ever present possibility of a terrible disaster underscores the need for careful and continuing vigilance in the transportation of hazardous materials.

Mindful of these concerns, the Surface Transportation Subcommittee has led the way over the last several years to ensure public safety in transportation. At the same time, we have sought, where possible, to avoid unnecessarily impeding commerce. As a balanced example, I am pleased that in 1990, this subcommittee considered, and the Senate ultimately enacted, the Sanitary Transportation of Food Act, which required that containers for food shipments not be used for waste or hazardous materials.

I appreciate the fact that Secretary Peña recently accepted my commonsense recommendation that edible oils should not be classified as hazardous materials under the Oil Pollution Act of 1990. In short, when we consider the public interest in transportation and safety, real world experience must be evaluated as well. I believe that, in general, the Hazardous Materials Transportation Uniform Safety Act of 1990—HMTUSA—met this balanced test. The 1990 act ended long debate by establishing a decisive Federal role in ensuring the safety of the transportation of hazardous materials.

Notable aspects of HMTUSA included a national strategy for training of emergency response and enforcement personnel; development of consistent Federal, State, and local hazmat safety regulations; better coordination and information gathering systems; improvements in the choice and performance of containers, and other initiatives.

Mr. Chairman, your comments, please.

OPENING STATEMENT OF SENATOR HOLLINGS

The CHAIRMAN. Today, the Commerce Committee will hear testimony on the implementation and enforcement of the Hazardous Materials Transportation Uniform Safety Act of 1990. In light of the large and growing volume of hazardous materials being transported daily on our railroads and highways, it is imperative that we ensure that such shipments arrive at their intended destinations safely, and without incident or injury to the public.

This hearing provides an appropriate opportunity to review the implementation of the significant statutory changes in hazmat safety policy and enforcement mandated in 1990 by this committee and Congress. Specific issues to be addressed by the witnesses at this hearing include: one, the current status of the implementation by the Department of Transportation of HMTUSA, and other related pending rulemaking proceedings; two, the effectiveness of the overlapping oversight responsibilities of DOT modal agencies with responsibility for hazardous materials transportation safety; three, steps that may be necessary to improve compliance with and enforcement of the hazardous materials transportation statutes and regulations; four, specific actions, if any, which Congress should take in response to the report by the National Academy of Sciences on emergency response to hazardous materials transportation incidents; and five, concerns raised in connection with the imposition of registration fees under HMTUSA, and whether various State hazardous materials registration and permit fees are equitable and utilized for purposes intended under HMTUSA.

On behalf of the committee, I am pleased to welcome Rose McMurray, the Acting Administrator of the Research and Special Programs Administration within DOT, along with two of her colleagues from RSPA and the Federal Railroad Administration. They will update us on DOT's progress in ensuring hazmat safety.

Following Ms. McMurray, Dr. Paul Rothberg of the Congressional Research Service will provide an independent assessment of DOT's activities in this area. Next, two panels of expert witnesses, representing rail and truck carriers, shippers, emergency responders, and labor, will share with the committee their specific concerns with respect to hazmat safety.

I look forward to the testimony this morning.

Thank you, Mr. Chairman.

Senator EXON. Thank you, Mr. Chairman. This morning, we will hear testimony on the impact of the 1990 act and on its implementation by DOT. In addition, the subcommittee will review what further steps may be necessary to improve compliance with and enforcement of hazmat safety laws. We also will consider new safety issues which have arisen since the 1990 legislation, so that the subcommittee may proceed with the reauthorization process.

I would intend, at a future date following this hearing, to introduce hazmat reauthorization legislation for consideration by the Senate.

I am pleased to welcome before this subcommittee, Rose A. McMurray, the Acting Administrator of RSPA of DOT, along with two of her colleagues from that agency and FRA. They will update us on DOT's progress in ensuring hazmat safety.

Dr. Paul Rothberg of the Congressional Research Service—CRS—will provide an independent review of DOT's implementation of HMTUSA, as well as other hazmat safety concerns.

Two panels of expert witnesses will follow, representing rail and truck carriers, shippers, emergency responders, and labor.

To all of the witnesses, I extend a warm welcome this morning. We thank you all for being here, and I look forward to your testimony.

With that, I see the initial panel before us. As I indicated earlier, Rose McMurray is Acting Administrator for RSPA of DOT. And we have Mr. Alan Roberts, the Associate Administrator for Hazardous Materials Safety, and Philip Olekszyk—I hope I pronounced that correctly—Deputy Associate Administrator for Safety, FRA.

To move things along as quickly as possible, we would like to have Dr. Paul Rothberg, specialist in science and technology for CRS, to please join this panel.

We will begin the testimony with Ms. McMurray. Welcome.

STATEMENT OF ROSE A. McMURRAY, ACTING ADMINISTRATOR, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

Ms. MCMURRAY. Thank you. Good morning, Mr. Chairman.

My name is Rose McMurray, Acting Administrator of the Research and Special Programs Administration. We thank you for the opportunity to update you on the Department of Transportation's ongoing efforts to improve the safety of transporting hazardous materials.

With me today is Mr. Alan Roberts, the RSPA Associate Administrator for Hazardous Materials Safety, who will respond to your more technical questions.

Also, on my left, testifying today from the Federal Railroad Administration is Mr. Philip Olekszyk, the Deputy Associate Administrator for Safety.

This morning, I would like to address our progress in implementing the regulatory provisions under the Hazardous Materials Transportation Act, or HMTA, as amended by the Hazardous Materials Transportation Uniform Safety Act, or HMTUSA, of 1990.

As you know, the HMTUSA was the most comprehensive change to hazardous materials legislation since the HMTA was passed in 1974. HMTUSA was the result of a convergence of ideas and was driven by unprecedented cooperation among States, local governments, industry, and Federal interests.

It assigned major new responsibilities to our agency, RSPA. And we believe we have made significant progress in carrying out the act's statutory obligations.

One of the priority programs under HMTUSA was the Registration and Fee Assessment Program, which was initiated in September 1992. This rule requires persons who transport, or cause to be transported, certain hazardous materials to file registration statements with RSPA and to pay an annual fee of $300 to fund an Emergency Preparedness Grants Program.

To encourage registration, RSPA developed an extensive outreach and compliance program to advise shippers and carriers of the new requirements through information and education.

Over 200,000 informational brochures and registration forms were mailed out for the initial registration period. I might mention here that our registration program does not usurp the State's ability to impose reasonable hazardous materials-related registration fees.

Our review tells us that the amount of State fees and the purposes for which they are being used are appropriate. However, under the HMTUSA, the Department of Transportation has both the responsibility and the authority to preempt State or local fees if they are not equitable, or if they are not used for purposes related to hazardous materials transportation.

This year, we are adding a new element to the registration program. While we will continue our aggressive outreach efforts to encourage voluntary registration, we will begin applying greater emphasis on enforcement at the Federal, State, and local levels. We are hopeful that these steps will result in significantly higher registration.

RSPA is working closely with two of our sister DOT agencies, the Federal Highway Administration and the Federal Railroad Administration, to achieve this.

If we find that these efforts do not significantly increase the number of registrants, RSPA will evaluate the program to determine whether the amount of the registration fee needs to be increased or if other program adjustments need to be made in time for the next collection year.

Mr. Chairman, the enforcement and outreach efforts of the registration program are critical, because the funds generated by the program support our new Emergency Preparedness Grants Program.

Through these grants, we are working with the States to increase the training of the over 2 million emergency responders, as well as to assist local emergency planning committees.

This year is the first year of the grant program, and we have received an overwhelming response to it. In fact, approximately $3.5 million has been awarded to 49 States and territories so far this fiscal year. And we expect to award a total of $8.9 million to States, territories, and Indian tribes by the end of the 1993 fiscal year.

In addition to providing needed resources for the preparation of emergency responders, HMTUSA also required RSPA to issue regulations requiring training to be given to all hazardous materials employees by their employers.

This training covers the safe loading, unloading, handling, storing, and transportation of hazardous materials, and emergency preparedness for responding to accidents or incidents involving the transport of hazardous materials.

We look to this rule to assist in increasing safety by helping assure that all employees involved in hazardous materials are trained adequately to perform their duties.

RSPA recently published a notice of proposed rulemaking that proposes to extend the hazardous materials regulations to intrastate commerce, as required by the HMTUSA. To date, only the intrastate highway transportation of a limited number of hazardous materials has been subject to these regulations.

Requiring intrastate shippers and carriers to comply with the hazardous materials regulations will bring uniform application and enforcement of the rules nationwide, which will significantly improve safety.

Another HMTUSA initiative is close to completion with the delivery, on April 29, of the National Academy of Sciences study on the feasibility and necessity of establishing a central reporting system and computerized telecommunications data center.

While the NAS recommended against implementation of the originally proposed national central reporting system, it did recommend that the Department undertake one or more limited startups of automated information systems, naming the rail industry as the practical place to start.

We are currently drafting an agreement between ourselves and the Federal Railroad Administration to contribute funding to a study, the Houston Cooperative Emergency Planning Project, already initiated by the Federal Railroad Administration.

A departmental task force will use the results of this study to evaluate the benefits and costs of developing a more widely implemented system. The Houston study is expected to be completed by May of next year.

We are also currently reviewing the NAS study and preparing a report on their recommendations for the Secretary to submit to Congress later this year.

Closely related to this study is a rulemaking which addresses improvements to the current system of placarding vehicles transporting hazardous materials, and establishing a central reporting system and data center.

An advance notice of proposed rulemaking was published last year. We are analyzing those comments, and they will be included in our report to Congress.

In February, RSPA published an interim final rule to implement the Oil Pollution Act of 1990. The intent of that rule was to strengthen release prevention by subjecting the bulk transportation of previously unregulated oil to the hazardous materials regulations issued under the HMTA.

However, as you mentioned, Mr. Chairman, the rule proved to be controversial, because the definition of oil in the act included nonpetroleum oils such as vegetable oils.

In response to public and industry concerns, as well as questions raised by Secretary Peña, that subjecting previously unregulated oils to the hazardous materials regulations was unnecessary, RSPA published a second interim final rule on June 16, which removed the hazardous materials designation from these previously unregulated oils.

We believe this action will provide adequate protection for the environment, while imposing minimal costs and burdens on the regulated community. We are accepting public comments on this interim final rule through the end of this month.

Mr. Chairman, RSPA and its sister DOT operating administrations are committed to working with all segments of the hazardous materials community to safeguard our environment and to improve hazardous materials transportation safety in this country.

At the Federal, State, and local levels, we continue to strengthen existing programs and cultivate new programs that bring us closer to achieving our goal, improved safety.

Thank you, Mr. Chairman.

Mr. Roberts, Mr. Olekszyk, and Mr. Rothberg, and I will be happy to respond to any questions you may have.

Senator EXON. Thank you very much, Ms. McMurray.

[The prepared statement of Ms. McMurray follows:]

PREPARED STATEMENT OF ROSE A. MCMURRAY

Good morning Chairman Exon and members of the Subcommittee. I am Rose A. McMurray, Acting Administrator of the Research and Special Programs Administration (RSPA). Thank you for the opportunity to update you on the Department of Transportation's ongoing efforts to improve the safety of transporting hazardous materials. With me today is Mr. Alan Roberts, RSPA's Associate Administrator for Hazardous Materials Safety, who will respond to your more technical questions. Also testifying today from the Federal Railroad Administration (FRA) is Mr. Philip Olekszyk, the Deputy Associate Administrator for Safety. I especially want to address the Department's progress in implementing the regulatory provisions under the Hazardous Materials Transportation Act (HMTA), as amended by the Hazardous Materials Transportation Uniform Safety Act (HMTUSA) of 1990.

As you know, the HMTUSA was the most comprehensive change to hazardous materials legislation since the HMTA was passed in 1974. HMTUSA was a convergence of ideas, driven by unprecedented coordination and cooperation among the states and local governments, industry, and Federal interests. It assigned our agency, RSPA, major new responsibilities. RSPA has made significant progress in carrying out the Act's statutory obligations.

REGISTRATION

One of the significant new programs under HMTUSA was the "Hazardous Materials Transportation Registration and Fee Assessment Program" which was initiated in September 1992 after an extensive rulemaking effort. The rule requires persons who transport, or cause to be transported, certain hazardous materials to file registration statements with RSPA and pay an annual fee of $300 to fund an emergency preparedness grants program. To date, we have collected approximately $14 million from 47,000 registrants, including reregistrants from the 1992-1993 registration year.

I might mention here that our Registration Program does not usurp the states' ability to impose reasonable hazardous materials related registration fees. In general, we have found that the amount of state fees and the purposes for which they are utilized are appropriate. However, under the HMTUSA, the Department has both the responsibility and the authority to preempt state or local fees if they are

excessive, or if they are not used for purposes related to hazardous materials transportation.

In conjunction with the publication of the final rule, RSPA developed an extensive outreach and compliance program to advise shippers and carriers of the new registration requirements through information and education. Over 200,000 informational brochures and registration forms were mailed out for the initial registration period. For the 1993-94 registration year, which runs from July 1, 1993 through June 30, 1994, we have sought to identify those entities which have not yet registered with us by using additional Federal data sources, together with national industry and trade associations, to identify potential registrants.

This year, however, a new element is being added to the registration program. While we will continue our aggressive outreach effort, greater emphasis is being placed on enforcement at the Federal, state and local levels, which we hope will result in significantly higher registration. RSPA is working closely with the Federal Highway Administration (FHWA) and the FRA. Last month, FHWA conducted ROADCHECK '93, a 3-day intensive national program to identify whether motor carriers are in violation of the Federal Motor Carrier Safety and Hazardous Materials Regulations. Over 3000 Federal and state inspectors, operating at more than 300 locations throughout the U.S., carried out extensive motor carrier safety inspections during the 3-day period. As part ROADCHECK '93, nine states, one from each FHWA region, combined their inspection forces with FHWA specialists nationwide, emphasizing the registration requirement and providing RSPA with a report of noncompliant parties for follow-up action. Finally, with the cooperation and support of the other administrations within DOT, RSPA has established an enforcement referral policy designed to take action against persons failing to register and pay the fee. To date, RSPA has identified more than 100 entities that have not registered and apparently are required to do so. We are referring information on those shippers and carriers to the modal agencies for appropriate enforcement action.

Because we have just completed the first year of this program, we believe that the efforts to move towards a more aggressive and effective enforcement posture will result in a wider compliance rate among the hazardous materials community in the second year. We have already begun efforts to ensure that hazardous materials offerors and carriers are fully aware of the annual registration requirement through notices published in the Federal Register and direct mailings. If these efforts do not significantly increase the number of registrants, RSPA will evaluate the program to determine whether the amount of the registration fee needs to be increased or other program adjustments need to be made in time for the next collection cycle.

PLANNING AND TRAINING GRANTS PROGRAM

The enforcement and outreach efforts of the registration program are critical because the funds generated by the registration program support our new emergency preparedness grants program. Through the grants program, we are working with the states to increase the training of emergency responders and assist local emergency planning committees. This assistance will reinforce the State Emergency Response Commission/Local Emergency Planning Committee structure mandated by the Emergency Planning Community Right-to-Know Act of 1986, and enhance training in hazardous materials emergency response, which is vital to the continued safe and efficient transportation of hazardous materials. This year is the first year of the grant program, and we have received an overwhelming response to it. In fact, approximately $3.5 million has been awarded to 49 states and territories so far this fiscal year, and we anticipate awarding a total of $8.9 million to states, territories, and Indian tribes by the end of the 1993 fiscal year.

TRAINING RULE

In addition to providing needed resources for the preparation of emergency responders, HMTUSA also required RSPA to finalize its efforts to issue regulations requiring training to be given to all hazardous materials employees by their employers. This training covers the safe loading, unloading, handling, storing, and transportation of hazardous materials, and emergency preparedness for responding to accidents or incidents involving the transportation of hazardous materials. It has been a little over a year since we issued the final rule on training—and the initial training of employees must be completed prior to October of this year. Recurrent training is required at least once every two years. Since most hazardous materials incidents can be attributed to human error, the better people are trained, the less likely they will become involved in or cause accidents. This rule will assist in increasing safety by helping assure that all employees involved in hazardous materials are trained

to perform their duties. As a result of this new regulation, we hope to see a measurable reduction in incidents involving hazardous materials.

INTRASTATE TRANSPORTATION

RSPA recently published a notice of proposed rulemaking that proposes to extend the Hazardous Materials Regulations to intrastate commerce, as required by HMTUSA. To date, only the intrastate highway transportation of hazardous wastes, hazardous substances, marine pollutants, and flammable cryogenics in portable and cargo tanks has been subject to the HMR. Requiring intrastate shippers and carriers to comply with the HMR will bring uniform application and enforcement of the HMR nationwide, which will significantly improve safety. The public comment period is open until October 7, 1993.

NATIONAL ACADEMY OF SCIENCES STUDY

On April 29, 1993, a study on the feasibility and necessity of establishing a central reporting system and computerized telecommunications data center, capable of receiving, storing, and retrieving data concerraing all daily shipments of hazardous materials within the U.S., was transmitted by the National Academy of Sciences (NAS) to Congress and the Secretary of Transportation. The center would also be able to identify hazardous materials being transported by any mode of transportation, and be capable of providing information to aid response to accidents and incidents involving the transportation of hazardous materials. While the NAS recommended against implementation of the originally proposed national central reporting system, it did recommend that the Department immediately undertake one or more limited start-ups of automated information systems. naming the rail industry as the practical place to start. FRA has a study already underway (the Houston Cooperative Emergency Planning Project), which highlights the benefits of enhanced cooperation between railroads, emergency responders, and the development of a critical information communications system. We are drafting an agreement between RSPA and FRA to contribute funding of this effort and to piggy-back on its results, which are expected by May, 1994. In addition, we are reviewing the NAS study and preparing a report on the NAS recommendations for the Secretary to submit to Congress later this year.

REGULATIONS ON IMPROVING HAZARDOUS MATERIALS IDENTIFICATION SYSTEMS

Closely related to this study is a rulemaking which addresses improvements to the current system of placarding vehicles transporting hazardous materials, and establishing a central reporting system and data center. An advance notice of proposed rulemaking was published last year; comments are being reviewed, and an analysis of those comments will be included in the report to Congress on the NAS study.

OIL POLLUTION ACT

In February, RSPA published an interim final rule to implement the Oil Pollution Act of 1990. The intent of the rule was to strengthen release prevention by subjecting the bulk transportation of previously unregulated oil to the HMR issued under the HMTA. However, the rule proved to be controversial because the definition of oil in the Act included non-petroleum oils such as vegetable oils. In response to public and industry concerns that subjecting previously unregulated oils to the Hazardous Materials Regulations was unnecessary, RSPA published a second interim final rule on June 16, 1993, which removed the "hazardous materials" designation from previously unregulated oils. We believe this action will provide adequate protection for the environment, while imposing minimal costs and burdens on the regulated community. We are accepting public comments on the interim rule through the end of this month.

CLOSING REMARKS

RSPA and its sister DOT operating administrations are committed to working with all segments of the hazardous materials community to safeguard our environment and improve hazardous materials transportation safety. At the Federal, state, and local levels, we continue to strengthen existing programs and cultivate new programs that bring us closer to achieving our goal—improved safety and nationwide uniformity in the application and enforcement of the Hazardous Materials Regulations. Thank you and we will be happy to respond to any questions you might have.

Senator EXON. I would say, at this time, that all of the written statements which have been submitted by the panels appearing before us today are accepted and made part of the record at the appropriate place without objection.

Let me turn now, if I may, to Dr. Paul Rothberg for his statement and testimony. And then we will go to questions.

STATEMENT OF DR. PAUL ROTHBERG, SPECIALIST IN SCIENCE AND TECHNOLOGY, CONGRESSIONAL RESEARCH SERVICE, SCIENCE POLICY RESEARCH DIVISION, LIBRARY OF CONGRESS

Dr. ROTHBERG. Thank you.

The 1990 Hazardous Materials Act is leading to fundamental and positive changes in relevant Federal programs in the hazmat industry and in the emergency response community.

In response to this law, DOT has significantly strengthened its hazmat enforcement program and improved the delineation of Federal and State regulatory responsibilities. DOT's new training regulations for industry employees should lead to a reduction in the number of releases during transportation of dangerous chemicals. Federal funds to supplement State emergency response training and planning activities should yield improved responses to spills.

Although steady progress has been made in implementing the 1990 statute, the Department has not met congressionally set deadlines for two key safety provisions; namely improved highway routing standards for hazmat carriers and safety permits for high-risk truck shipments. These delays increase risk.

The generally safe operating practices of industry, together with improvements in Government policies and programs, underpin DOT's assertion that the transportation of hazardous materials today is safer than ever before.

As shown on page 5 of my written statement, relatively few deaths and injuries result from the unintentional release of hazardous materials during transportation.

In light of these facts, the committee could report out a relatively clean reauthorization bill, but the potential for catastrophic crashes releasing hazardous materials may still be greater than need be.

Thus, it is worthwhile to ask: What other cost-effective measures might be implemented to promote hazmat safety? I would like to present the following five options:

Option No. 1 would direct the Department to require carriers and shippers to retain hazmat shipping papers for a reasonable time period.

This is particularly important in the motor carrier area. This requirement would facilitate and strengthen hazardous materials enforcement.

Inspectors use these documents as evidence in proving safety violations. Such a requirement would work against those companies that now attempt to evade enforcement by telling inspectors that they do not keep such records. This requirement may impose additional costs on some companies, but many companies already retain such records for other purposes.

Option 2 would require DOT to develop and implement a system that provides objective information about the regulatory compliance of hazmat shippers.

The Department now provides useful information to interested parties on the regulatory compliance and safety management practices of truck companies. DOT does not have a system that provides similar information on hazmat shippers.

DOT does, however, inspect more than 8,000 hazmat shippers each year. Providing credible assessments of these companies would likely promote safety. For example, insurance companies might demand improvements in the operation of poorly rated shippers before reassigning and reissuing policies. The system envisioned would be a challenge to develop and would need to allow for due process protection.

Option 3 would ensure that the National Intelligent Vehicle-Highway System, or IVHS Program, includes a strengthened hazmat safety component.

One of the key Federal efforts that is designed to advance transportation technology is the National IVHS Program. This activity is now federally funded at roughly $200 million per year. However, less than $200,000 of these dollars link IVHS technology directly to hazmat safety. Numerous technological opportunities to promote hazmat safety have not been fully exploited by State and local governments or industry.

For example, many more electronic placards could be installed on certain high-risk shipments. This would enable emergency response personnel to electronically access information at a crash scene where placards are unreadable.

In the reauthorization bill, Congress could continue, if not accelerate, the current IVHS activities promoting hazmat safety. By providing programmatic guidance, this option, however, could slightly reduce the flexibility that the Secretary now enjoys in administering this program.

Option 4 would allow Indian tribes to receive DOT hazmat planning moneys. Hazardous materials are transported to and through Indian lands. Although tribes of Native Americans can receive training funds, they cannot apply for planning moneys under the new grant program authorized by HMTUSA. For purposes of equity and safety, Indian tribes could be directly included in the planning grant program. This would have a negligible impact on the amount of funds that the States receive. If the amount allocated to Indian tribes became disproportionate, the DOT could limit this by administrative action.

And the last option would allow DOT to issue its report on hazmat activities once every 2 years instead of annually as now required by the 1974 Hazardous Materials Act. Staff time and money would be saved by preparing this report once every 2 years.

Thank you for this opportunity to discuss the implementation of HMTUSA and to offer several possible options that you might consider in the bill to reauthorizing this legislation.

Senator EXON. Dr. Rothberg, thank you very much.

Let me turn to some questions, starting with you, Ms. McMurray. Two questions I intended to ask today were just brought up in the testimony by Dr. Rothberg.

With all of the concerns that we now have with the flooding in the basins of the Missouri and the Mississippi Rivers, how have our rail and truck industries been affected? What alternative arrangements have freight shippers had to undertake? That was one of the questions I noticed in the testimony by Dr. Rothberg. Specifically with regard to hazmat, I have heard reports of trains which were stranded for a considerable period of time by flood waters. Has there been any issue of hazardous materials safety, of a significant nature, arising out of the recent flooding? What have we learned from it, if anything?

Ms. McMURRAY. The Department of Transportation has been very actively engaged in response to flood recovery efforts. In fact, the Secretary is in Keokuk, IA and Quincy, IL today inspecting highway bridges and railroad crossings.

If I could just address the question that you posed about hazardous materials and railroads: The railroads were very capable in anticipating the floodwaters.

In fact, the floodwaters rose very slowly. And because of that, they were able to remove hazardous cargo from the stricken sites. They were able to reroute around the flood area.

And in point of fact, it has been an unprecedented cooperative effort among the railroads to ensure that freight does move east to west and west to east. There is considerable damage to railbeds throughout the upper Mississippi.

I was at the—in Saint Louis over the weekend at the Presidential Summit. We did do some examining of all infrastructure impacts in the area. And I can assure you that they are severe.

With respect to hazardous materials movements in the motor carrier area, they also anticipated the rise of floodwaters and the possibility that highway bridges would be disabled. And they also took precautions to reroute both hazardous materials and other shipments around the upper Midwest.

With respect to the specific issue that you raise on, "Are hazardous materials in jeopardy in the flood area?" I had mentioned that the railroads and the motor carriers did take precautionary efforts.

They are required in the event of a hazardous materials incident to report to the National Response Center any discharge of hazardous cargo. We have only had one documented report of an accident.

And that was a tank car which, apparently, was turned over on its side, but there was no discharge of hazardous materials. We have been absolutely conscientious in checking with the NRC to make sure that there are no hazardous cargo in the area.

And even with those precautions, in the event that a container were to be breached during this flood, in the event that that container does make its way into the water system, the amount of floodwater compared to the amount of discharge from the tank cars is overwhelming.

And the material would be quickly dispersed in the water, but we are very aware of the situation we have. There are departmental and State officials on the scene monitoring the situation.

And I can assure you that we are particularly conscientious about any hazardous materials releases.

Senator EXON. Along those lines, and also referenced in testimony by Dr. Rothberg, could you update us on the status of those

sections of HMTUSA which have not yet been implemented by DOT? When do you anticipate completion of all of the rules and reports required by this act? Is that in sight?

Ms. MCMURRAY. I would suggest to you that we have been very aggressive in implementing the 1990 HMTUSA. I would suggest that everything has either begun or is very close to completion.

We have a number of rules that have been published, including the training rule for hazardous materials employees and the registration rule, which I mentioned in my opening statement.

The grant program is underway. And we have made our first disbursement in May and expect to do our second disbursement by the end of the fiscal year.

The intrastate transportation rule was released this month and is out for comment. We have a number of studies that are underway or have been completed in draft. The National Academy of Sciences study is one.

We have a notice of proposed rulemaking on improving placarding and hazard information systems. The mode and route study, under the leadership of RSPA, is underway. And we would hope that early next year we will have a report for consideration.

We also have the report on the use of dedicated trains for radioactive materials underway within the Department. We already have implemented the provisions for increasing the imposition of civil penalties from $10,000 a day to $25,000 a day for violators of the hazardous materials regulations. So, we believe that we have taken steps in each and every area.

And I might ask Al Roberts if there may be something in addition to what I have mentioned that is either underway or is close to finalization.

Senator EXON. Thank you very much.

Without objection, I would like to place in the record, at an appropriate point, an excerpt from an article from the Nebraska Trucker magazine of June 1993, which discusses how these new hazmat safety regulations are being perceived by the trucking industry. That will be entered into the record without objection.

[The information referred to follows:]

[Nebraska Trucker, June 1993]

SAFETY

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HAZMAT

The hazardous materials regulations are hard to understand and interpret. These regs need a complete rewrite. If the average individual can read and understand them, then compliance would be easier to achieve.

* * * * * * *

The Federal Government has recently taken steps to improve the transportation of hazardous materials. With the new changes implemented, the transportation of hazardous materials will be more uniform with the International Regulations of Hazardous Materials. With more and more U.S. companies trading internationally, and more overseas companies trading in the United States, these changes will benefit everyone. The recent changes will increase awareness, better communicate risk, and at the same time, improve public safety.

Historically, the hazardous materials regulations (HMR's) have been, at best, hard to understand and interpret. Therefore, shippers, manufacturers, and transporters are hard pressed to attain full compliance. One remedy that DOT is looking

into is to revise the HMR's to make them easier to read and understand. The thought here is if the regulations were written and the book set up so an average individual could read and understand, then compliance would be easier to achieve.

The HMR's are written in such a manner as to send an individual to several sections to find applicable instructions. For instance, section 173.150 Exceptions for class 3 states: "Limited quantities of flammable liquids are excepted from labeling requirements, unless offered for transportation or transported by aircraft, and the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph. In addition, shipments of limited quantities are not subject to Subpart E of Part 172 of this subchapter. Each package must conform to the packaging requirements of Subpart B of this Part * * *"

An easier way to state the intent of this paragraph would be: "Packages containing limited quanitites of flammable liquids must be marked according to Subpart D of part 172 and be accompanied by a shipping paper prepared in accordance with Subpart C of Part 172. If transportation is by air, the package must be labeled according to Subpart E of Part 172. Each package must conform to the packaging requirement of Subpart B of Part 173."

Instead of stating the negative, as in the first example, it is better to state what is needed to prepare the package. In the existing regulations, a person must first know that the basic rule is every hazardous material must be packaged in a specified container. That package must be marked, labeled, and accompanied by a shipping paper. Finally, the vehicle must be placarded. From there, that person must subtract those items which are excepted from the list, and what is left is what must be done. This is not the case in the second example. This example clearly states which parts of the regulations apply to shipment of these specified items.

Additionally, there needs to be a section-by-section cleanup of the language within the HMR's. The current language contains a considerable amount of double talk without clearcut instructions. Examples of this are too numerous to list, however, prime examples can be found in Sections 172.301 General Marking Requirements for Non-Bulk Packaging and 172.504 Placarding.

Many times an exception to the rule is buried deep within the text of specific requirements for a certain product. "Batteries, electric storage, wet" is a prime example. A person needs only to read through Section 173.159 to find that in paragraph (e) there it total exception from the regulations if four criteria are met. This means that paragraphs (a) through (d) and then (f) through (h) are very specific instructions as to the packaging and transport of batteries and buried in paragraph (e) is the exception to the rule.

The regulations contained in the HMR's are complex and convoluted. A more user-friendly format would benefit shippers, transporters, and enforcement personnel. A clear, concise set of regulations would be a plus to the entire industry.

Senator EXON. Let me now ask a question or two about rail tank car safety. Please update us on the status of the pending rail tank car safety rulemakings. As you know, last year's transportation appropriations bill mandated that FRA complete these rulemakings by September of this year. Will FRA meet this deadline? Can you tell us more about the rules which will be proposed? I assume that Mr. Olekszyk would be the one that would answer that question.

STATEMENT OF PHILIP OLEKSZYK, DEPUTY ASSOCIATE ADMINISTRATOR FOR SAFETY, FEDERAL RAILROAD ADMINISTRATION

Mr. OLEKSZYK. Thank you, Mr. Chairman.

Actually, for information, RSPA will actually be the agency that will issue that rule, but we are doing the work to put the rules together.

We intend in the FRA, as well as working with RSPA, to issue both HM–201 and HM–175A by September 30, as required by the amendment which you referenced. Just a little bit of background—I will not go into a lot of detail—but HM–201 was based on two previous rulemakings that dealt with periodic inspection of tank cars and tank car shell thickness issues.

The NPRM, of course, I cannot discuss much of that in detail, because we are in the middle of rulemaking, but that NPRM will certainly cover those two subjects.

HM–175 was a larger—it also was generated by two previous rulemakings and covers a much larger range of topics, including requirements for head shields and thermal protection for cars that are not currently required to have head shields and thermal protection, aluminum cars, nickel cars, half-head shields, gaskets, manways.

A number of components on tank cars were the subject of the previous rulemakings. And those issues will also be covered in the notice of proposed rulemaking that we intend to issue before September 30.

Senator EXON. I would like to turn to you for a minute, Dr. Rothberg. In testimony to follow, Mr. Emmett, on behalf of the National Industry Transportation League—NITL, will seek an exemption for foreign shippers from the DOT hazmat registration program. What are the issues associated with providing for such an exemption, in your opinion?

Dr. ROTHBERG. Well, Senator, there are several issues. The first is the fiscal stability of the fund. As you know, the registration fees are used to pay for the Hazardous Materials Public Sector Training and Planning Grant Program.

I have looked at this issue, and I have concluded that the amount of funds that might be collected from the foreign shippers is not necessary to ensure the fiscal integrity of the grant program. The amount of funds that already have been collected from motor carriers and U.S. shippers already exceeds the allowed appropriation under this program for fiscal year 1993.

Furthermore, the timing of the fee collection and the grant cycle, coupled with DOT's disbursement policy, should ensure that the Department will always have sufficient funds available for the grant program. And this is coupled to the fact that DOT can adjust the amount of the registration fee and the scope and nature of the companies that are required to pay the fee. So, the law does allow the Department some flexibility to ensure the fiscal integrity of the grant program.

The next issue is whether the information that is gained from the registration program is of absolute importance. And the bottom line is: The information gained from the registration of foreign shippers is of somewhat marginal value.

And the reason I say this is that the Department has a limited inspection force, and with respect to shippers, it will spend its time looking at foreign and U.S. shippers that come to the attention of the Department.

And it has plenty of U.S. and foreign companies that it needs to visit—that have come to its attention. And it does not have the total resources that would be necessary to conduct an inspection and audit on every single foreign shipper.

So, the point I am making is: It is not absolutely critical to know the exact location of every foreign shipper for purposes of inspection.

The last issue is the issue of the effect of requiring registration of foreign shippers on U.S. companies. The fact is that there could

be significant negative impact of requiring these shippers to register.

I have reviewed a number of letters that the Department has given me from foreign governments; and, based on this review, I believe that this action could provoke other countries to impose similar or even larger registration fees and paperwork burdens on U.S. hazmat companies doing business abroad. So, such a foreign response could make U.S. products less competitive in our global marketplace.

Senator EXON. As briefly as you can, Dr. Rothberg, please tell us more about your concept of providing increased public information on shippers of hazardous materials. Why is this important? How do you feel DOT might go about evaluating shippers? And what challenges would be involved in such an activity?

Dr. ROTHBERG. DOT inspectors audit thousands of hazardous materials carriers and shippers each year. The Department does issue useful information on the results of these audits regarding motor carriers.

DOT issues what are called "safety ratings." And these safety ratings evaluate the safety management systems of the motor carriers.

Now, this committee, in the Motor Carrier Safety Act of 1990, believed it was in the public interest to require the Secretary to make widely available these safety ratings. And this provision was put into the Motor Carrier Safety Act of 1990. No similar system exists to provide public information on shippers of hazardous materials. And if credible evaluative information were readily available to point out which hazmat shippers were repeatedly not in compliance with the safety regulations or which shippers were judged by the Department to pose an exceptionally high risk, based on objective measures obtained during the audits that the Department conducts, I believe that the forces of the marketplace might work to promote an even greater level of safety than that which exists now.

For example, insurance companies might demand improvements in the operation of problem shippers before reissuing policies. Also, carriers of hazardous materials might increase their monitoring of the load when it is offered to them.

Now, the driving force behind my thinking is twofold: One is that providing increased public information to carriers and insurance companies would level the playing field. The Government does provide a safety rating for carriers. So, the issue is: Should the Government also provide some information on shippers?

The second point that is behind my thinking is that because of budgetary limitations, the days in which we are going to substantially increase the number of hazmat inspectors, like we have done over the last 20 years or so, may be coming to an end for several years.

We probably just do not have the money any more. So, the issue for you to decide is: Can we promote greater safety and compliance by using the forces of the marketplace?

The bottom line is of some significance to many companies. And so this is another way, another approach to try to promote safety.

With respect to your question of, "How would the Department go about this?" It took the Department several years to develop a fair-

ly reasonable approach to the safety rating of motor carriers. And as a result of each reiteration, the Department has sought to improve the safety rating process. And it is becoming more and more useful.

It would take a few years to get a good process, a good rating system for shippers. But, some of the factors that might be considered are the results of the inspection. The safety inspector typically spends between four hours and several days in a place of operation. And they get a pretty good understanding of the acute and critical safety violations of the hazardous materials shipper.

Other factors that might be considered are the nature of the products being offered for transportation, the safety management system of the shipper, their ability to train their employees, and the general findings of the audit—all of these factors would be incorporated into an objective assessment.

The current safety rating process for carriers provides for some degree of due process, some degree of appeal. And similar opportunities might exist if this was extended to shippers of hazardous materials.

So, those are some of the reasons behind this thinking.

Senator EXON. Thank you, Dr. Rothberg. Senator Lott.

OPENING STATEMENT OF SENATOR LOTT

Senator LOTT. Thank you, Mr. Chairman.

I have no questions of the panel. I just want to thank them for their time. And I was in hopes that maybe I could hear the next panel that is scheduled as soon as possible.

Senator EXON. All right.

Senator LOTT. Thank you.

Senator EXON. There will be additional questions for the record.

Before I dismiss this panel, is there anything that any of you would like to add to questions that were raised or suggestions that were made, before we close out this part of the hearing?

Ms. MCMURRAY. I would only like to make a comment that the administration has forwarded the UMTA reauthorization legislation to the Congress as of yesterday.

And, again, because we believe that the 1990 amendments strengthened the Hazardous Materials Transportation Act and the Department of Transportation's roles and responsibilities, we are very pleased to submit the reauthorization in its form. And we urge quick enactment of it.

Thank you.

Senator EXON. Thank you very much. We would hope that you could answer the written questions that we might ask of you as quickly as you can for completion of the record.

Ms. MCMURRAY. We would be happy to. Thank you.

Senator EXON. With that, we are very pleased that you came. Thank you and you are dismissed.

Now I will call panel No. 1: Mr. Edwin L. Harper, president and chief executive officer of the Association of American Railroads; Mr. John J. Collins, executive vice president of the American Trucking Associations; Mr. Clifford J. Harvison, president of the National Tank Truck Carriers, Inc.

Gentlemen, thank you very much for being here with us. We will begin with Mr. Harper this morning. Welcome to you, Ed. We are glad to have you back again.

STATEMENT OF EDWIN L. HARPER, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

Mr. HARPER. Thank you very much, Senator. It is a great pleasure to be back with you and Senator Lott before this committee. I appreciate the opportunity to testify on behalf of the members of the Association of American Railroads on the reauthorization of the Hazardous Materials Act.

AAR is pleased to be able to report that the industry's safety record is improving. In the 10-year period, 1983 through 1992, the number of train accidents in which hazardous materials were released per thousand carloads decreased 38 percent.

In light of the industry's outstanding safety record, as well as the numerous initiatives to improve hazardous materials transportation safety, a simple reauthorization bill would be appropriate.

Underway are a number of initiatives to make the transportation of hazardous materials by rail even safer. The Railroad Tanker Safety and Research Project, a joint endeavor of the AAR and the Railway Progress Institute, analyzes accident data for trends, and AAR Tank Car Committee is computerizing tank car repair records to enable the committee to similarly ascertain from these records recurring problem areas. AAR is about to launch an annual audit of the quality assurance programs of tank car manufacturers and repair facilities, which will supplement the inspections AAR already undertakes of these facilities. Minor leaks of corrosives from tank car safety vents have been a persistent problem in the railroad industry, and AAR is researching ways of curing this problem.

Emergency response training remains an industry priority. Annually, the railroad industry gives free emergency response training to 20,000 State and local firefighters, police, and other personnel. In addition, AAR, the Chemical Manufacturers Association, and other trade associations are continuing to participate in TRANSCAER, which helps localities prepare for hazardous materials incidents.

The Transportation Research Board recently recommended that a pilot study be undertaken of communications between railroads and emergency responders. AAR believes that the Houston Cooperative Emergency Planning Project, undertaken by FRA and the Port Terminal Railroad Association, a railroad that handles 300,000 carloads of hazardous materials annually, fulfills this recommendation.

Mr. Chairman, thank you for the opportunity to present the railroad industry's views on hazardous materials transportation.

Senator EXON. Mr. Harper, thank you very much.

[The prepared statement of Mr. Harper follows:]

PREPARED STATEMENT OF EDWIN L. HARPER

Mr. Chairman, I appreciate the opportunity to testify on behalf of the members of the Association of American Railroads (AAR) on the reauthorization of the Hazardous Materials Transportation Act (HMTA). The nation's railroads transported approximately 1.5 million carloads of hazardous materials last year. Thus, they share your keen interest in the safe transportation of hazardous materials.

Today, AAR would like briefly to discuss the railroads' outstanding safety record and to describe the industry's ongoing programs to improve the safe transportation of hazardous materials by rail. These developments suggest a simple reauthorization of HXTA is sufficient. I also will address the Transportation Research Board's (TRB) recent report, Hazardous Materials Shipment Information for Emergency Response.

RAIL TRANSPORTATION OF HAZARDOUS MATERIALS IS BECOMING SAFER

The last ten years have seen the railroads handle a dramatic increase in hazardous materials ship'ments while improving their safety record. Overall, safety has improved; Federal Railroad Administration (FRA) data show total train accidents per million train miles decreasing 39 percent, from 7.00 to 4.26, from 1983 through 1992.

Railroads also have improved their hazardous materials transportation record. The number of hazardous materials shipments increased from approximately 1 million carloads in 1983 to 1.5 million carloads in 1992. If these data are combined with FRA accident statistics, train accidents in which hazardous materials were released per thousand carloads decreased 38 percent in the 1983 to 1992 time period, from .052 to .032.

THE RAILROAD INDUSTRY'S EFFORTS TO IMPROVE HAZARDOUS MATERIALS TRANSPORTATION CONTINUE

Underway are a number of initiatives to make the transportation of hazardous materials by rail even safer. I will discuss some of the most significant projects today.

The "Railroad Tank Car Safety Research and Test Project," funded by AAR and the Railway Progress Institute (RPI), is in its third decade. over the last few years, industry has used the Project's analyses of types of head shields, tank shells, and bottom outlets. The Project is currently collecting data on the loads imposed on tank cars in transportation to facilitate the development of up-to-date fatigue requirements for use by tank car builders. In addition, the Project is continuing its longstanding function of analyzing accident data to spot trends in accidents to enable tank car builders to improve tank car designs.

AAR'S Tank Car Committee also is enhancing industry's ability to spot problem areas. The Tank Car Committee is responsible for setting standards for the construction, maintenance, and safe operation of tank cars, recoiniaending to DOT changes in the hazardous materials regulations, and monitoring tank car repairs. Facilities repairing tank cars must submit repair reports to AAR's Tank Car Committee. The Committee is establishing a computer data base of repairs to enable the Committee to ascertain quickly recurring problem areas.

AAR has considerably enhanced the inspection and audit of tank car manufacturing and repair facilities. AAR certifies tank car manufacturing and repair facilities and, in conjunction with the certification process, inspects facilities every six years. AAR's hazardous materials arm, the Bureau of Explosives, also conducts annual inspections of the facilities. AAR is about to supplement these inspections with an annual audit of the quality assurance programs of manufacturing and repair facilities.

AAR currently is examining improvements to the transportation of corrosive materials. Over 30 percent of all hazardous materials incidents are very small releases from safety vents on tank cars used to transport corrosives. Safety vents are located on the top of tank cars and are designed to release pressure inside a tank car in the event it becomes excessive. A principal cause of releases from safety vents is premature "bursting" of discs in the vents due to surges of liquid from one end of a tank car to the other. AAR has petitioned Research and Special Programs Administration to permit the use of one particular design that would reduce premature bursting, and is continuing to research other ways of reducing the incidence of releases from safety vents.

The National Transportation Safety Board has recommended that AAR and DOT investigate alternative methods for periodically testing the structural integrity of tank cars. Currently, hydrostatic testing is used. DOT is about to institute a rulemaking proceeding to address the issue and AAR's Tank Car Committee has formed a subcommittee to investigate alternate testing methods and participate in the rulemaking proceeding. Acoustic emissions testing is the most promising alternative; another alternative that would be useful in certain instances is ultrasonic testing.

The railroad industry has continued to emphasize emergency response training. Annually, individual railroads and AAR give free emergency response training sessions to approximately twenty-thousand state and local fire fighters, police, and other personnel. At its Transportation Test Center (TTC) in Pueblo, Colorado, AAR

offers advanced hazardous materials training courses on tank car safety and courses for both the first responder and the expert on responding to railroad and highway incidents. Fire departments, government agencies, and private industry have sent over 20,000 individuals, most of whom are emergency responders, to TTC training courses since the inception of hazardous materials training in 1985.

AAR, the Chemical Manufacturers Association (CMA), and other trade associations are sponsoring TRANSCAER, "Transportation Community Awareness and Emergency Response." Industry participants in TRANSCAER help local emergency planning committees prepare for hazardous materials incidents by educating committee members about the hazardous materials transported through their communities and assisting in the development of emergency response plans. TRANSCAER participants also strive to inform local officials about industry resources available to them in an emergency. Through the TRANSCAER program, one railroad is planning a whistle-stop campaign for this fall during which the railroad will emphasize community emergency planning.

Finally, AAR's Bureau of Explosives publishes Emergency Handling of Hazardous Materials in Surface Transportation, which contains emergency response information for every hazardous material in DOT's Hazardous Materials Table. The information in Emergency Handling is targeted at the initial responder to a hazardous materials incident. AAR also publishes more detailed emergency information in Emergency Action Guides, a set of pamphlets containing commodity-specific emergency response information.

TRB'S REPORT ON EMERGENCY RESPONSE

Section 25 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HTTUSA) mandated a study of a "central reporting system and computerized telecommunications data center" that could provide information on hazardous materials shipments to emergency responders on a daily basis. The purpose of such a system would be to facilitate responses to hazardous materials transportation emergencies by providing responders with ready access to information on hazardous materials shipments involved in a derailment.

TRB undertook this study and recently issued a report, Hazardous Materials Shipment Information for Emergency Response. The report concludes that the reporting and telecommunications system addressed in section 25 of HMTUSA should not be implemented. The report supports the position AAR has taken in previous years, that railroads and shippers already have in place systems that provide much of the information that would be available through the proposed system. The report also gives credence to prior estimates of the tremendous cost of the proposed reporting and telecommunications system. TRB estimates that start-up costs of a limited version of the system would be $300 million, with additional operating expenditures of $250 million annually. In making this estimate, TRB excluded shipments by air, water, and small and medium-sized trucks. In 1990, DOT estimated that it would cost $12.3 billion annually to fully fund the system described in section 25.

Having concluded that a system meeting the requirements of section 25 is impractical, TRB recommends that a pilot study be undertaken of communications between railroads and emergency responders. TRB suggests that during this pilot study, emergency responders be provided access to shipment information in a railroad's computerized data system. A computer link between railroads and emergency responders is one aspect of the "Houston Cooperative Emergency Planning Project" undertaken by FRA and the Houston Port Terminal Railroad Association (PTRA), a railroad that handles more than 300,000 carloads of hazardous materials annually. The Project is scheduled to be completed in May 1994.

Further conclusions about the need for a computer link between emergency responders and carriers should await the results of the Project. TRB's report states that a link between fire fighters and railroad employees with access to computerized shipment data might be functionally equivalent to providing fire fighters with a direct link to railroad data bases. Railroads today do provide emergency responders with telephone numbers they can call to obtain round-the-clock information on hazardous materials shipments. Hopefully, the Project will shed light on whether there is a need to enhance communications between emergency responders and railroads.

In light of the ongoing initiatives to improve the safe transportation of hazardous materials, a simple reauthorization bill would be appropriate. The programs underway are addressing the significant hazardous materials issues facing the railroad industry today. Additionally, the favorable trend in accident statistics shows that the railroad industry's efforts to improve the safe transportation of hazardous materials by rail are having a substantial impact.

Mr. Chairman, thank you for the opportunity to present the railroad industry's views on hazardous materials transportation.

Senator EXON. Mr. Collins.

STATEMENT OF JOHN J. COLLINS, SENIOR VICE PRESIDENT, GOVERNMENT AFFAIRS, AMERICAN TRUCKING ASSOCIATIONS

Mr. COLLINS. Mr. Chairman, Senator Lott, it is a pleasure for me to be here today. My name is John Collins. I am senior vice president for government affairs with the American Trucking Associations.

ATA is the national trade association of the trucking industry. We represent all types and sizes of motor carriers in the United States.

I know your time is very limited today, so what I would like to do is go directly to the five areas that you raised in your letter of invitation, give you our recommendations on each one, and then I would be happy to answer any questions.

The first issue you raised was: How is DOT doing on the implementation of the 1990 amendments? I think by and large they are doing well. They have begun work on a number of the activities.

Dr. Rothberg mentioned the one regulation that I think right now gives us some problems, and that is highway routing. The final regulation was due out by the direction of this committee in the summer of 1991.

It has come out as a proposed regulation, but we still have not seen the final regulation. The reason that it is so important is, after the regulation becomes final, there are still 2 years before it becomes effective. So, we are really in a period right now where we are at sea. We have not seen the final regulation.

I think stepping back to the big picture of the 1990 amendments, I would echo what the other witnesses have said, that that was a watershed piece of legislation.

That legislation is important because of a word right in the statute. It said uniform. Uniformity is so essential in interstate commerce for the safe transportation of hazardous materials. The rules have to be the same. You cannot have different rules and designations as you cross State lines.

Moving to the second issue, you were concerned about how are the different parts of DOT working together to make sure that their interpretations and their regulations mesh well.

I think by and large they are doing OK. Our concern right now is that the Federal Highway Administration has direct responsibility for some parts of the statute, and yet RSPA, who you heard from this morning, has overall responsibility. We need to watch to make sure that they follow each other's interpretations.

It seems fairly logical that one part of DOT would look to another part for expertise. However, I worked at DOT for 11 years, and what is logical unfortunately is not always the way things are done.

I think we do have to make sure that FHWA bows to the interpretations that RSPA has already put into effect: to make sure that those regulations are uniform, and really do have the preemptive effect that is needed.

The third area you asked about was: What can we do to improve the enforcement of hazardous materials regulations? We have been strong supporters of increased inspections of trucks at roadside, because we think that is really the way to make sure that the enforcement presence is felt across all types of motor carriers.

However, the computer system used by roadside inspectors catches a lot of information about the trucking company that is inspected, but it does not catch any information about the shipper.

So, the problem that is being detected shows what is happening with individual truckers, but the actual problem may go back to the shipper. A particular shipper may not be labeling the materials correctly or may not be providing the correct placards.

So, a simple recommendation is that the Federal Highway Administration should expand the data that they collect at roadside to include shippers. If they see a pattern of shipper violations, they should direct their efforts back to solving the problem at its origin, rather than just looking at symptoms.

The fourth area you were concerned about was the tracking of hazardous materials movements. We strongly support the recommendation of the National Academy of Sciences. It says that the benefits of a computer system to track all hazardous materials movements in the United States did not justify its cost.

We do support the other recommendations in the study to look at improving the notification system, the tracking system that exists right now. We think there are a number of incremental improvements that could be made.

Mr. Chairman, the last issue you raised was: What do we think about registration and fees for hazardous materials? We are very concerned that States and localities are creating duplicative hazardous materials transportation fees.

One of the things we would urge the committee to look into is the eligibility for grant funds that were created in 1990 and disallow funds to States and localities that are charging duplicative fees.

That prohibition exists already in the Interstate Highway Program. A locality cannot charge tolls on an interstate system highway built with Federal funds. Charge one place, charge the other, but do not charge twice.

That concludes my statement, Mr. Chairman. Thank you.

[The prepared statement of Mr. Collins follows:]

PREPARED STATEMENT OF JOHN J. COLLINS

I am John Coffins, Senior, Vice President, Government Affairs with the American Trucking Associations. I welcome the opportunity to present testimony concerning the trucking industry's perspectives on the re-authorization of the Hazardous Materials Transportation Act.

ATA, the nation's trade association of the trucking industry, represents every type and class of motor carrier in our nation, for-hire and private—regulated and exempt—through its 51 a11liated state trucking associations, organizations, conferences, and several thousand individual motor carriers. ATA conducts nearly two dozen hazardous materials transportation courses every year throughout the United States and is responsible for developing products which help motor carriers comply with the hazardous materials regulations.

The motor carrier industry is not a single industry—rather, it is a collection of industries, from truckload to less-than-truckload, from general freight carriers to specialized carriers such as munitions transporters, from coast-to-coast delivery to local pick-up and delivery service. The trucking industry is comprised of more than

260,000 firms and accounts for 77 percent of all freight transportation revenues in this country. The public and the American economy depend on truck transportation to provide the goods, services and materials that move America.

This transportation includes the transportation of hazardous materials. "Hazardous Material" is a term of art and includes a broad spectrum of products the public would not think of as hazardous, such as consumer products, lighter fluid, and charcoal. The safe transportation of hazardous materials is vital to the public safety and economy of this country. We fully support this legislation that reauthorizes the Hazardous Materials Transportation Act. The Act provides for a strong federal role in governing the regulatory aspects of the transportation of hazardous materials. We strongly support continued Federal funding for these Federal programs and strong Federal leadership.

I would like to take this opportunity to point out a number of areas of special concern to the motor carrier industry regarding the safe and efficient movement of hazardous materials the Subcommittee should consider as it reauthorizes the program.

Issue No. 1: Current status of implementation: Uniformity

Discussion: Since the early 1980's, state and local governments have become increasingly concerned about the transportation of hazardous materials. Much of this has been based on perception rather than fact, or a lack of faniiliarity of the state or locality with the federal program.

Regardless of the particular form a state or local law might take, or the good intentions of a state or locality to increase the safety of its own citizens, to the extent that such unique state or local laws may diminish the risk in one area, it has often occurred at the expense of the citizens of other states or localities. For example, under Federal law as it existed prior to the 1990 amendments, one jurisdiction required trucks to be painted special colors based on the hazardous materials being transported. This marking system was not nationally uniform and interfered with interstate commerce.

Recommendation: The re-authorization now being considered should not reduce the uniformity provisions now contained in current law.

Issue No. 2: Oversight responsibilities of DOT modal agencies

Discussion: Historically, RSPA has been the agency within DOT which issues interpretations regarding implementation of hazardous materials rules. Because of this responsibility , RSPA has built an extensive library of interpretations which address every aspect of hazardous materials transportation. Moreover, many persons have asked RSPA, through the process of inconsistency rulings (now determinations of preemption) to decide if state and local laws were in conflict with federal regulations. Here, too, an extensive amount of information has been gathered over the years.

Recently, FHWA was given the task of promulgating regulations regarding hazardous materials routing and safety permits for motor carriers. With these new assignments come the responsibility of issuing interpretations to those who need clarification of the intent of the regulations. FHWA should follow the lead of RSPA when issuing interpretations on these subjects in the future. The motor carrier industry feels that this is the only way to continue to move forward towards uniformity in regulations regarding hazardous materials transportation.

Recommendation: FHWA and any agency in the future with responsibilities for regulations regarding the transportation of hazardous materials should be compelled to follow RSPA's interpretations when issuing their own interpretations or determinations of preemption.

Issue No. 3: Improving enforcement of hazardous materials regulations

Discussion: Motor carriers have been routinely checked for violations of the hazardous materials regulations at roadside inspections. Many violations, such as improper shipping names, classification, or packaging are generated by the shipper of the material. Motor carriers must rely upon shippers to perform their functions of properly classifying, packaging, marking, labeling, and describing hazardous materials prior to them being offered to a transporter. Often, what may appear to a driver accepting the hazardous materials as a properly prepared shipment, in fact is in violation due to an error in any of the shipper functions prior to transportation.

ATA applauds the recent Federal Highway Administration's Office of Motor Carriers (OMC) initiative to attempt to get to the source of hazardous materials violations by visiting motor carrier facilities to inspect shipments in transit. OMC inspectors are looking for shipper violations in an attempt to identify problem shippers. Afterward, OMC visits these shippers in order to educate them in the proper procedures to follow in the future.

Through the efforts of OMC and the cooperation of the trucking industry, the seriousness and number of violations of the hazardous materials regulations will diminish.

Recommendation: Congress should support the efforts of OMC by providing it with continued financial support to carry out the shipper compliance program. Additionally, we urge Congress to have FHWA restructure the SafetyNet computer system currently used to record motor carrier roadside inspection activity and motor carrier safety audit information. This computer system should be used to identify shipper violations and trigger audits when repeated violations occur.

Issue No. 4: Tracking of hazardous material movements

Discussion: The motor carrier industry was pleased to see that the National Academy of Science's study recommended against the establishment of a national computer tracking system for hazardous materials.

With the tens of thousands of hazardous materials shipments moving every day without incident, fewer than one half of one percent of all hazardous material shipments are involved in incidents requiring emergency response, and most of these do not create a pr9blem of hazardous material identification.

We agree with the National Academy of Science conclusion that a national central reporting system as originally proposed "would be unlikely to function as intended or to produce benefits sufficient to justify its costs." Any fiiture pilot programs or studies must be initiated with caution.

Recommendation: This Subcommittee should accept the recommendation of the National Academy of Science's study concerning a national computer tracking system. DOT should continue to work with emergency responders, carriers and shippers to ensure that improvements are made to existing systems for providing timely and accurate information to emergency responders at hazardous materials transportation incidents.

Issue No. 5: Registration and fees

Discussion: Based on the 1990 amendment to the Hazardous Materials Transportation Act, motor carriers and shippers engaged in the transportation of hazardous materials are required to register with the Department of Transportation. The registration and fee program is now in place, with registrants paying an annual fee of three hundred dollars. The monies generated by this registration program are used to fund a public sector grant program created to increase the effectiveness of state and local hazardous materials emergency and planning programs.

In addition to the Constitutional prohibition under the Commerce Clause against discriminatory or unduly burdensome fees, Title 49 United States Code 1811 prohibits states from imposing hazardous materials transportation fees which are not "equitable" or which are not used for purposes related to the transportation of hazardous materials. Unfortunately, these prohibitions have not deterred the states from imposing state fees on motor carriers transporting hazardous materials. The proliferation of state and local hazardous material fees is a growing and serious problem for the trucking industry.

The interstate motor carrier industry has two areas of concern with respect to state hazardous materials registration and permit fees. The first of these is currently being addressed by DOT and the State Affiance for Haz Mat Transportation Procedures under Section 22 of HMTUSA—namely, the establishment and implementation ot uniform procedures for the administration of state and local hazmat fees on interstate motor carriers. The Alliance, created under the leadership of the National Governors' Association (NGA), has largely completed its work, and is preparing final recommendations for DOT for its consideration in writing federal regulations which are to be issued in 1996.

The Alliance did an enormous amount of work and cooperated closely with representatives of motor carriers engaged in the hauling of hazardous materials. We believe the Alliance recommendations will, in the main, serve as very useful guidance for DOT in its subsequent rulemaking. In addition, the work of the Alliance will be embodied, over the next year, in a four-state pilot project being set up to test the framework of the base-state fee program which forms the basis of the Alliance recommendations. The results of this pilot will also be of great value to the DOT as it proceeds in its rulemaking.

It may be useful to enumerate, once again, the industry's most important criteria for an acceptable system of uniform state hazmat fees:

- fees must be fair and not excessive,
- the system must not include flat per-vehicle or per-carrier fees or any other fees not apportioned according to a carrier's level of operations in the various states,

- it must allow a carrier to satisfy all of its state hazmat permitting and registration requirements through licensing and payment through a single state, its base state, and
- it must not require a carrier to divulge proprietary business information in the course of hazmat licensing or permitting.

I noted above that the DOT rules in this area are not to be issued until 1996. In the meantime, states are imposing a variety of non-uniform and unapportioned fees on interstate motor carriers which the industry is being obliged to challenge in state courts. This is an area of major concern for interstate motor carriers.

Recommendation: We urge this Subcommittee to review carefully the growth of duplicative hazardous material fees by the states. We further suggest that the Subcommittee disallow hazmat grants to states that have duplicative state hazmat fees.

In closing, I wish to assure you of ATA's continued commitment to the safe transportation of hazardous materials on our nation's highways. We offer our support for passage of the reauthorization of the Hazardous Material Transportation Act. I will be pleased to answer any questions.

Senator EXON. Thank you, Mr. Collins. Mr. Harvison, we welcome you here. We are glad to have you.

STATEMENT OF CLIFFORD J. HARVISON, PRESIDENT, NATIONAL TANK TRUCK CARRIERS, INC.

Mr. HARVISON. Thank you, Senator. Good morning.

Senator EXON. Your statement has been accepted for the record, and if you could, please summarize it at this time.

Mr. HARVISON. I certainly will, sir. Thank you. Thank you for the opportunity to testify in support of the reauthorization of HMTUSA.

My name is Cliff Harvison. I am president of the National Truck Carriers, a trade association, the members of which are extensively involved in the transportation of hazardous materials, hazardous substances, and hazardous wastes.

Just about 3 years ago the Congress, led by this committee, concluded an extensive reevaluation and restructuring of the Nation's laws and regulations dealing with hazmat transportation. That important legislation focused on three critical elements of considerable importance to the tank truck carrier.

No. 1, it redefined and clarified the regulatory roles of the Federal Government, versus those of States and local jurisdictions.

No. 2, it provided resources and programs to train emergency response personnel who are at risk at the scene of an accident or incident.

And No. 3, it directed the Secretary of Transportation to implement a registration and permitting program which will eventually, we believe, enhance both compliance and enforcement.

Simply stated, the members of NTTC supported those objectives in 1990, and we see no reason for the Congress to alter the present course.

Importantly, one must note that the Congress did not pass HMTUSA in a vacuum. For instance, the uniformity and safety mandates of HMTUSA blend well with prior congressional action dealing with commercial drivers' licenses and mandatory drug and alcohol testing, which impact all operators of all trucks, regardless of the nature of the cargo.

Perhaps the only glitch we see on the horizon, and a matter we trust will be reviewed by this committee, concerns fees for State hazmat carrier registration programs.

Presently, HMTUSA has created a Federal ongoing registration program for shippers and carriers of hazardous materials.

The annual registration fee is currently set at $300. At the same time, HMTUSA permits individual States to levy fees on those same carriers and shippers. Basically,, the proceeds from both fees are to be directed to the enhancement of training and the enforcement of the State and local programs at those levels of government.

We have no problem with the concepts involved; however, we do believe that some States might be tempted to impose fee levels so high as to defeat the basic purposes of HMTUSA and/or become simply another revenue raiser.

The current statutory language properly places no dollar cap on the level of State fees. By the same token, the only tests that a State must meet are a showing that the fee is equitable, and a showing that the fee is related to the transportation of hazardous materials. I believe the potential for abuse is obvious.

Mr. Chairman, we respectfully ask that this committee and the Congress amend HMTUSA to require States, which choose to levy hazmat registration fees, to, at the very least, publicly disclose the financial basis of any registration fee.

This should enable interested parties to assure that State hazmat fees are set according to congressional guidelines without, at the same time, imposing substantial burdens on State officials and administrators.

Again, Mr. Chairman, I thank the committee for the opportunity to testify, and along with my fellow panel members, I will be happy to attempt to respond to any questions.

Senator EXON. Mr. Harvison, thank you very much.

[The prepared statement of Mr. Harvison follows:]

PREPARED STATEMENT OF CLIFFORD J. HARVISON

Mr. Chairman and members of the Committee, thank you for the opportunity to testifv in support of reauthorization of the Hazardous Materials Transportation Uniform Safety Act (HMTUSA).

My name is Cliff Harvison, and I am President of National Tank Truck Carriers, Inc. (NTTC) a trade association the members of which are extensively involved in the transportation of hazardous materials, hazardous substances and hazardous wastes throughout the continental United States.

Just about three years ago, the Congress (led by this Committee) concluded an extensive reevaluation and restructuring of the nation's laws and regulations dealing with hazmat transportation by passing HMTUSA.

That important legislation focused on three critical elements of considerable importance to the tank truck carrier:

1) it redefined and clarified the regulatory roles of the Federal government versus those of states and local jurisdictions;

2) it provided resources and programs to train emergency response personnel who are "at risk" at the scene of an accident or incident; and,

3) it directed the Secretary of Transportation to implement a registration and permitting program which will (eventually) enhance both compliance and enforcement.

Simply stated, the members of NTTC supported those objectives in 1990; and, we see no reason for the Congress to alter the present course.

Importantly, one must note that Congress did not pass HMTUSA in a vacuum. For instance the uniformity and safety mandates (of HMTUSA) blend well with prior Congressional action dealing with Commercial Drivers' Licenses and mandatory drug and alcohol testing which impact all operators of trucks regardless of the nature of the cargo.

Perhaps the only "glitch" we see on the horizon (and a matter we trust will be reviewed by this Committee) concerns fees for state hazmat carrier registration programs.

Presently, HMTUSA has created a Federal on-going registration program for shippers and carriers of hazardous materials. The annual registration fee is currently set at $300. At the same time, HMTUSA permits individual states to levy fees on those same carriers and shippers. Basically, the proceeds from both fees are to be directed to the enhancement of training and enforcement at the state and local levels of government.

We have no problem with the "concepts" involved; however, we do believe that some states might be tempted to impose fee levels so high as to defeat the basic purposes of HMTUSA and/or become simply another "revenue raiser".

The current statutory language, properly, places no "dollar cap" on the level of state fees. By the same token, the only "tests" that a state must meet are a showing that the fee is "equitable" and that "* * * (the fee) is related to the transportation of hazardous materials". I believe the potential for abuse is obvious.

Mr. Chairman, we respectfully ask that this Committee and the Congress amend HMTUSA to require states (which choose to levy hazmat registration fees) to (at the very least) publicly disclose the financial basis of any registration fee. This should enable interested parties to assure that state "hazmat" registration fees are set according to Congressional guidelines without imposing burdens on state officials and administrators.

Again, Mr. Chairman, I thank the Committee for the opportunity to testify in support of reauthorization (with minor clarifying amendments), and I will attempt to respond to any questions.

Senator EXON. Senator Lott, do you have any questions?

Senator LOTT. Not at this time. Thank you.

Senator EXON. Gentlemen, I believe you heard my earlier question to the previous panel regarding the Midwest floods. Do you know of any hazmat problems that we have had in the areas in which all three of you are involved?

Mr. HARPER. Speaking for the railroads, we know of no hazardous material problems resulting from the floods. I think Ms. McMurray adequately summarized our information about the flood situation and rail cars.

Mr. COLLINS. Mr. Chairman, the same goes in the trucking industry. The rivers rose slowly, so we were able to avoid problem areas. Our principal concern now is making the deliveries. For example, gasoline is treated as a hazardous material. If a farmer cannot get gasoline to run his electric generator, and his power is cut off from the rural co-op, then that can be a serious loss for him.

So, our primary concern is making the deliveries. We have the ability tp route trucks over different roads. As long as there is a road open, we can get through. We can reroute around problems, but in some cases the rerouting is very significant. An 18-mile trip can become a 150-mile trip.

Mr. HARVISON. Again, Mr. Chairman, from the tank truck carrier perspective, we are involved in some rather extraordinary routes of an average haul, let us say, of generator fuel, heating oil, et cetera.

It might be normally 75 miles, and we are finding today, with the major interruption, particularly with barge traffic, that we are hauling fuel to powerplants from south of St. Louis, up to Minneapolis, St. Paul, extraordinary moves.

The main problem, and I take this opportunity to compliment the Department of Transportation, particularly at the regional level—our main problem is getting drivers with available hours of service.

The Department has been excellent, particularly the Department's structure at the regional level, in explaining to carriers how to utilize their drivers best, and in some cases, waiving some of the requirements regarding the hours of service, to make sure that the product does get there.

So, I think overall the administration of the Department is to be complimented, in terms of how they have responded to this crisis.

Senator EXON. Gentlemen, thank you very much. I, and possible other members of the subcommittee, will have some additional questions which we would appreciate your answering as quickly as possible.

I thank you again for being here. As usual your testimony, comments, and suggestions are important to us, as we move forward cooperatively with you on this matter about which we are all very much concerned. With that, you are excused.

The second panel consists of Mr. Edward Emmett, the president of the National Industrial Transportation League—NITL; Mr. Frederick Nesbitt, the director of governmental affairs for the International Association of Fire Fighters—IAFF; Mr. Lawrence Mann, counsel for the Railroad Labor Executives' Association—RLEA; and Mr. Dennis Skelton, the acting director of the National Freight Division, International Brotherhood of Teamsters—IBT.

Gentlemen, we welcome you back once again, and it's good to see familiar faces. We always look forward to this bevy of witnesses because you have been particularly helpful to us over the years.

If there is no choice among you for order of testimony, we will start with Mr. Edward Emmett. Ed, welcome back.

STATEMENT OF EDWARD M. EMMETT, PRESIDENT, NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

Mr. EMMETT. Thank you, Mr. Chairman. Mr. Chairman, my name is Ed Emmett. I am president of the National Industrial Transportation League, and appear today on behalf of the league.

The National Industrial Transportation League is the Nation's oldest and largest shipper' organization, representing companies of all sizes and commodities, and using all modes of transportation to move their goods in intrastate, interstate, and international commerce.

Even though I am relatively new to the league, it is already clear to me that league members are proud of the role they have played in working with the Congress in enacting the Hazardous Materials Transportation Uniform Safety Act.

Our experience with HMTUSA has been generally very positive. It appears that the act is creating the balanced environment we envisioned, and should not be changed in major ways.

We especially agree with the Transportation Research Board's conclusion that a national computer system to track the movement of hazardous commodities is not needed at this time. Members of the league feel strongly that such a system is unnecessary, and cost-ineffective.

As I said, on the whole, HMTUSA is too new to warrant making substantial revisions; however, we do seek the inclusion of certain minor reforms.

These four suggestions are attached to our written testimony as attachment A, and they address problems which were not anticipated when the measure was enacted almost 3 years ago.

First, the league recommends that the registration program for non-U.S. hazardous material shippers be amended to limit registra-

tion to those non-U.S. shippers and carriers who actually have hazardous materials operations within the United States.

Non-U.S. shippers and carriers who merely place goods in the stream of commerce should have no registration requirements.

The U.S. or foreign carriers transporting these products to the United States, as well as the companies receiving these products within this country, still would be subject to filing requirements, and we believe that should cover whatever is necessary.

The goal of this change is to ensure that U.S. exporters do not face retaliatory actions from foreign governments, which have already been threatened, by the way.

Our second proposed amendment affects the allocation of registration funds. The DOT currently is collecting registration and permit fees, which are meant to underwrite the training of emergency responders.

To assure that these funds are used for their intended purpose, the league recommends that DOT be required to report to Congress regularly on the disbursements of the registration program revenues.

This report should indicate which States receive training funds, and for what purposes. If funds are allocated for nontraining purposes, the DOT should indicate the safety benefit of such an allocation.

The third reform involves the base State registration program approved in May of this year by the HMTUSA Section 22 Task Force. We urge that Congress promote the implementation of these recommendations by setting a deadline by which States must adopt them, including the development of a base State registration program.

In addition, the State should be given transition assistance, including funding, to help facilitate voluntary compliance with the program.

Our final recommendation seeks a study by the Department of Transportation on the proliferation in the number of commodities designated as hazardous materials for transportation purposes.

We are deeply concerned that the hazmat transport list, which already numbers between 33,000 and 36,000 commodities, could be increased significantly by future administrative actions.

Page 1 of the TRB report refers to hazardous materials as substances "that would threaten humans." The recent example of RSPA's proposal to declare edible oils as hazardous materials suggests the potential for gross expansion of that definition.

We are glad that in the edible oils case the administration and congressional leaders used a commonsense approach to regulation, as articulated by Secretary Peña. Given the cost in time, dollars, and emotions, however, the league would like to avoid such exercises in the future.

In our written testimony, the league suggests topics for the DOT study and report, which should further the goal of assuring that the hazardous-in-transportation designation is preserved for those commodities which do pose a significant potential threat to health and safety when being transported.

In conclusion, the National Industrial Transportation League supports the reauthorization of HMTUSA, and supports giving the

Research and Special Programs Administration the tools it needs to carry out its mandates over the next 4 years.

We also ask that the reauthorization bill include the four technical points we have outlined, so HMTUSA continues to provide the balanced environment needed to assure that hazardous materials are transported in the safest and most efficient manner possible.

On behalf of the league, I appreciate this opportunity to present the views of the shipper community, and look forward to working with you and the committee staff in the future.

[The prepared statement of Mr. Emmett follows:]

PREPARED STATEMENT OF EDWARD M. EMMETT

My name is Edward M. Emmett I am president of The National Industrial Transportation League, and appear today on behalf of the League.

The National Industrial Transprtation League is a voluntary association of shippers, group: and associations of shippers, and other purchasers of freight trsnsportation servioes. It is the nation's oldest and largest organization representing companies of all sizes and commodities using all modes of transptation to move their goods in intrastate, interstate, and international commerce. For more than 80 years, it has been known as "the shippers' voice."

The League is, and has been, a strong supporter of federal hazardous materials transportation programs. We are dedicated to ensuring the safe and efficient movement of these commercially vital, but potentially dangerous, commodities. League members are proud of the role they played in wordng with thc Committee in enacting the Hazardous Materials Transportation Act and related legislation.

With respect to the HMTUSA, the League has and continues to participate in its implementation. Our experience with the Act has been generally very positive. It appears that the Act is creating the balanced environment we envision&L We are especially pleased that the National Academy of Science's Transportation Research Board has come to the conclusion that a national computer system to track the movement of these commodities is not needed at this time. Members of the League feel strongly that such a system is unnecessary and cost ineffective. The League supports the TRB's recommendations including the need to assure that any system is able to accommodate a variety of current and emerging technologies as well as the fiinding of a test program or programs.

On the whole, HMTUSA is too new to warrant making substantial revisions at this time. However, we do seek the inclusion of cerain minor reforms to the hazardous materials requirements so that our goals of creating the safest and most efficient system are better achieved.

These minor mid-course corrections adress problems which were not anticipated when the measure was enacted almost three years ago, and addressing them now would help to ensure the continued smooth functioning of this imporant law. They are meant merely to facilitate compliance with current requirements and to meet the President's mandate of promoting efficiency in government, and are attached to our written testimony as Appendix A.

The first proposed change affects the registration program, and involves a requirement that takes effect July 1, 1994. The requirement states that non-U.S. hazardous materials shippers and carriers have to register with the DOT's Research and Special Programs Administration even if they do not have facilities or operations within the U.S. In essence, these companies really are participating in the commerce of their own countries, but due to some interpretations of the wording in HMTUSA "causes to be shipped," there is a possibility that these companies would fall subject to U.S. registration requirements.

The League recommends that the hazardous materials registration program be amended to limit registration to those non-U.S. shippers and carriers who perform hazardous materials operations within the U.S. Non-U.S. shippers and carriers who merely place the goods in the stream of commerce would have no registration requirements. The U.S. or foreign carriers transporting these products to the U.S., as well as the U.S. or foreign companies receiving these products within the U.S., still would be subject to filing requirements so that the government would have access to information about these products. Acting now would have no revenue impact since these companies currently are not required to file.

The goal of this change is to ensure that U.S. exporters, especially chemical exporters where the U.S. has a favorable balance of trade, are not unduly prejudiced or penalized. It is meant to prevent foreign retaliation against these companies—retaliation which could make U.S. products noncompetitive in global markets.

This reform also is needed to prevent the proliferation of unecessary paperwork, and prevent U.S. shippers and carriers from being exposed to similar requirements across the world. These international fees and charges may not mirror the modest sums assessed by the Department of Transportation for the U.S. program. In addition, the reform would eliminate the potential for our trading partners to file GATT challenges against us.

The second proposed amendment affects the allocation of registration funds. The DOT currently is collecting registration and permit fees which are meant to underwrite the training of emergency responders for hazardous materials incidents. To assure that these funds are used for their intended purpose, the League recommends that DOT be required to report to Congress either annually or biennially on the disbursements of the registration program revenues. This report should indicate which states received training funds and for what purposes. If funds are allocated for nontraining purposes, the DOT should indicate the safety benefit of the allocation.

The third reform involves the base state registration program approved in May of this year by the HMTUSA Section 22 Task Force. Over the past two years, the public and private sectors have made significant progress in developing uniform procedures for the processing and paperwork tasks associated with state hazardous materials fees. We urge that Congress promote the implementation of these recommendations by setting a deadline by which states must adopt them, including the development of a base-state registration program. This compliance date should be after the testing of the pilot program recommended by the Section 22 Task Force. In addition, the states should be given transition assistance, including funding, to help facilitate voluntary compliance with the program.

It should be noted that Congress has encouraged the adoption of base-state programs. The Intermodal Surface Transportation Efficiency Act mandates the adoption of the International Registration Plan and the International Fuel Tax Agreement. The same efficiencies could result in hazardous materials transportation if the Section 22 reforms were adopted.

The last recommendation seeks a study by the Department of Transportation on the proliferation in the number of commodities designated as hazardous materials for transportation purposes and recommendations to limit this growth.

We are deeply concerned that the hazmat transport list, which already numbers between 33,000 and 36,000 commodities, could be increased significantly by future administrative actions aimed at protecting the nation's waterways. The recent example of RSPA's proposal to declare edible oils as hazardous materials suggests the potential for such actions. While agreeing with the goals of the Oil Pollution Act of 1990, we strongly believe that we must preserve the original intent of these hazardous materials controls—assuring that the commodities which truly need extra care in their transportation receive it. We are glad that in the edible oils case, the Administration and Congressional leaders used a common sense approach to regulation as articulated by Secretary Peña. Given the cost in time, dollars, and emotions of the edible oils proposal, the League would like to avoid such exercises in the future.

The DOT study and report should include, but not be limited to: (1) the health and safety risks posed to people and property by these commodities; (2) the need to develop alternative warning systems for commodities which might be environmentally sensitive but are not considered to be hazardous in transportation; (3) recommendations for implementing such a warning system; and, (4) other recommendations which further the goal of assuring that the haz&dzas in transportation designation is preserved for those commodities which do pose a significant potential threat to health and safety when being transported.

In conclusion, The National Industrial Transportation League supports reauthorization of HMTUSA and giving the Research and Special Programs Administration the tools it needs to carry out its mandates over the next four years. We also ask that the reauthorization bill include the four points we have outlined so that the HMTUSA continues to provide the balanced environment needed to assure that hazardous materials are transported in the safest and most efficient manner possible.

On behalf of the League, I appreciate this opportunity to present the views of the shipper community and look forward to working with you and your staff on this important issue.

APPENDIX A—DRAFT TECHNICAL AMENDMENTS, 1993 HAZMAT REAUTHORIZATION BILL

1. REGISTRATION OF NON-U.S. SHIPPERS

49 USC App. 1805 is amended in subsection (c)(1) by inserting after the words "the following activities" the words "within the United States".

49 USC App. 1805 is amended by striking subsection (c)(8) and inserting in lieu thereof the following:

"(8) LIMITATIONS ON FILINGS.—A person who carries out more than one activity for which filing of a registration statement is required by or under this subsection only needs to file one registration statement in order to comply with this subsection. In the case of imports into the United States, a person who performs a hazardous material function outside of the United States which results in the introduction into United States commerce of a hazardous material and who otherwise does not perform hazardous materials functions within the United States shall not be required to file a registration statement as required by this subsection."

2. ALLOCATION OF REGISTRATION FUNDS

49 USC App. 1805 is amended by adding at the end of subsection (c)(11) the following:

"The Secretary biennially is to transmit to Congress a report on the disbursement of registration revenues. This report is to include, but is not limited to, the allocation of funds among the states for training and disbursement of funds by the states for training. If the Department allocates either to itself or to the states registration revenues for other than training purposes, it is to account for that disbursement and the safety benefit(s) to be produced."

3. HMTUSA SECTION 22 RECOMMENDATIONS

49 USC App. 1801-13 is amended by adding at the end of subsection (f) of section 22 of the Hazardous Materials Transportation Uniform Safety Act the foUowing:

"The Secretary shall, within the latter of one year after date of enactment of this legislation or one year from the completion of the work (including any pilot projects) of the working group referenced in Section 22 of HMTUSA, initiate a rulemaking to establish uniform forms, requirements, and procedures under which States may permit andIor register shippers and carriers of hazardous materials. The final rule resulting from this process shall include provision for a base-state system and shall be promulgated by the Secretary not later than six months from the initiation of the rulemaking process. Thereafter, all states which seek to register or permit shippers and carriers of hazardous materials, including wastes, shall do so only in accordance with the rules promulgated by the Secretary. All participating states shall honor the permits granted by other participating states."

4. PROLIFERATION OF HAZARDOUS MATERIALS DESIGNATIONS

Not later than six months after the effective date of this Act, the Secretary is to transmit to Congress a report on the proliferation of commodities considered to be hazardous in transportation. The report is to include, but is not limited to: (1) the health and safety risks posed to people and property by these newly designated commodities; (2) the need to develop alternative warning systems for commodities which might be environmentaUy sensitive but are not considered to be hazardous in transportation; (3) recommendations for implementing such a warning system; and, (4) other recommendations which firther the goal of assurmg that the hazardous in transportation designation is preserved for those commodities which do pose a significant potential threat to health and safety when being transported.

OPENING STATEMENT OF SENATOR BURNS

Senator BURNS. Thank you, Mr. Emmett. I think I can remember going down and testifying before the rulewriting folks down at the Department of Transportation on edible oils, as they were going to try to put soybean oil, and olive oil, and everything else over in hazardous materials.

And I thought, oh-oh, we have to cut this out, or I never will get to the size of Mr. Skelton if we have to transport all these things around. [Laughter.]

I am just trying to get like the big boys. And we cannot do it in hazardous materials transportation, but anyway, I thank you for that.

Mr. Nesbitt, it is nice to have you here today, and I am looking forward to your testimony. Thank you for coming.

STATEMENT OF FREDERICK H. NESBITT, DIRECTOR OF GOVERNMENT AFFAIRS, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

Mr. NESBITT. Thank you. My name is Frederick Nesbitt, and I am the director of governmental affairs for the International Association of Fire Fighters. We represent nearly 200,000 professional firefighters across the United States.

First, allow me to offer some background on our organization's perspective on this issue. Firefighters across this country are the first responders to virtually all hazardous materials incidents, and our members experience firsthand the problems associated with inadequate information at the scene of a hazmat incident.

For us, this is not an abstract policy consideration. Our members lives literally depend upon the effectiveness of accurate, timely information. If the wrong fire suppression technique is utilized because of inadequate information, if we fail to evacuate, if our members do not wear the proper protective gear and equipment, we do not measure the mistake in lost goods, or vehicles, or money. We measure it in lost lives, and in increasing exposures, resulting in serious health problems.

Three years ago we were the primary organization advocating replacing the antiquated placard and manifest system with an automated information system. Legislation to do this received support from a number of organizations and hundreds of Members of Congress.

A study was conducted by the National Academy of Sciences, and was completed in April of this year. Two primary findings of the study fully endorsed the IFF's longstanding position on the issue of identifying hazardous cargo. The NAS study substantiates our contention that the current placard and manifest system is ineffective. The NAS concluded that the existing system fails with some regulatory.

There are technologically advanced systems that would dramatically improve our ability to respond to hazardous material incidents.

Automated identification systems are already in common use by carriers with hazardous materials, and would be well-suited for the information needs of America's emergency responders.

In light of these findings by the NAS, it can no longer be credibly argued that automated identification and tracking systems do not exist to provide the necessary emergency response information.

Indeed, one of the cruel ironies of this issue is that the vital information so unavailable to emergency responders is readily available to the current hazmat carriers and shippers, and is a routine part of doing business.

The NAS study made several recommendations, and we identify with those. They said that we should build on the existing technology and the existing computerization that exists in, for example, railroads and trucking, and we agreed with that.

And we should test a system with a 2-year startup project, not requiring computerization with a trucking company or railroad, but taking a trucking company and a railroad that already is heavily computerized, and meshing it with that the emergency responders, so we can have a startup project.

The startup project should be in both rail and highway, because, certainly, there are at least ten times more accidents on the highway involving hazardous materials than there are in the rail system.

So, the idea is to do the startup project, test the technology over 2 years, and, hopefully, at the end of the 2 years, we have a system that is workable, is cost effective. And then we add the other rails and the other carriers to it, and we have a nationwide system.

Second, firefighters should be directly involved in the development of the system, and the evaluation of the system. Too many times we find the systems are developed by technicians who have no hands-on experience, and don't know how the system would have to be utilized by our people.

We think that DOT should be granted the authority at the conclusion of the 2-year startup project to fully implement a nationwide system based on these findings.

Let me turn my attention to another area, and that is the unmet need of emergency responders for training and equipment. In 1990, when HMTUSA was created by both the House and the Senate, and signed into law, there was a user's fee established, and funds were set aside for States, particularly to train emergency responders.

I think we agreed in 1990—and it is even still more true in 1993—that it was not enough money, but it was at least hopefully going to be a beginning, and we were going to begin to train emergency responders. DOT testified this morning that some $3 million has already been released, and more money is on its way.

Unfortunately, from my point of view, the point of the view of the firefighters, the money has been misdirected by the States. Money has been spent for planning meetings. Money has been used to train people in water treatment plants, to train people who mow the grass along the highway, to train police, and the fire departments. Where they got money to train firefighters, they got less than $1 per firefighter.

To my knowledge, not one single firefighter has been trained with all of the funds that have been expended so far under HMTUSA. Unless this is corrected, this will continue to be a problem.

Also, there is supposed to be a committee to take a look at, and to establish, and approve the list of training programs. Unfortunately, the committee has gone back to square one, reinitiated the debate: What is an emergency responder? What are the rules and regulations? They have given no guidance to the States in terms of approved hazmat training programs.

Let me offer a couple of specific recommendations. One, with regard to the HMTUSA money, I think some of the money should be appropriated and allowed to go to employee and nonprofit organizations who have access to emergency responders, and a proven hazmat training curriculum, so they can receive the funds, and do training of emergency responders.

Second, I think we should ensure that we stop using funds to develop curriculum. We have good training curriculums out there, and programs, already in existence, many of which were funded by this very Congress. So, we do not need to reinvent the wheel.

And last, we need to get down into the fire departments where the real people exist, in terms of training firefighters, men and women who actually confront hazardous material incidents on a daily basis.

I hope, Mr. Chairman, that we can end the debate on what to do, and can get on with doing it. We truly need an automated identification system. So, I suggest we get on with the startup projects in rails and highways.

And let us change the formula, so that firefighters will be trained, and not waste the funds on unnecessary training and meetings. And let us stop wasting money on reinventing curriculum. We have it. We need to actually do the training.

Finally, I hope that we can complete the work that we began together in 1990 under HMTUSA, so that all emergency responders have the information and training necessary to fully respond to all hazardous material incidents.

We agree with you, Mr. Chairman; hazardous materials have to move across the country, and we think they should move across this country. We think they should be able to move across this country 24 hours a day, 365 days a year, on all highways.

We say that if the Nation's emergency responders have the information, and they have the training and equipment, we can respond to any incident quickly, accurately, with the least amount of interruption to a community.

We will not have to do unnecessary evacuations, and most importantly, we will not endanger the citizens that we are sworn to protect, and most importantly, from my point of view, the firefighters that I represent.

Thank you for the opportunity to testify this morning. We look forward to working with you on the reauthorization of HMTUSA. Thank you.

Senator EXON. Mr. Nesbitt, thank you very much. Just as an interesting point, 2 weeks ago, on my weekly trip back home, I happened to be seated next to a young firefighter from Lincoln, NE, who was on his way back home. He just had attended a hazardous materials school, I think it was of a week's duration, in the Chicago area. We had the chance to talk about it a great deal. He was very much impressed with the training that he had had, and thought it was very useful. He was taking his new knowledge back to the rest of the department there. So, I got the firsthand impression from him that things were working the way we wanted them to.

Mr. NESBITT. Well, they are beginning. That is part of our program. Our program, a lot of it, is what we call train the trainers.

In other words, we bring in people, we train them on hazmat training, and then we send them back to their respective departments.

Senator EXON. As I understood it, that is what he was doing.

Mr. NESBITT. Absolutely. Yes.

Senator EXON. Thank you.

[The prepared statement of Mr. Nesbitt follows:]

PREPARED STATEMENT OF FREDERICK H. NESBITT

INTRODUCTION

Mr. Chairman, my name is Frederick Nesbitt and I am the Director of Governmental Affairs for the International Association of Fire Fighters, AFL-CIO. I appear before you today on behalf of the nation's nearly 200,000 professional fire fighters to offer our views on the issue of hazardous materials in transportation.

First, allow me to offer some background on our organization's perspective on this issue. Fire fighters are the first responders to virtually all hazardous materials incidents, and our members experience first hand the problems associated with inadequate information at the scene of a hazmat incident. For us, this is not an abstract policy consideration; our members lives literally depend on the effectiveness of accurate, timely information. If the wrong fire suppression technique is utilized because of inadequate information, we do not measure the mistake in lost goods, vehicles or money. We measure it in lost lives and impaired health.

Three years ago, the IAFF was the primary organization advocating replacing the antiquated placard and manifest system ofidentifying hazardous cargo with an automated information system. Legislation to make such a change attracted widespread support from numerous organizations and hundreds of Members of Congress.

Two general arguments were heard in opposition to that proposal. First, some argued that the current system of identifying hazardous materials in transit works well. This argument, which contradicted the findings of several government studies of the effectiveness of the placard and manifest system, was put forward by those who have a vested interest in preserving the status quo.

The second argument, advanced by Members of Congress for whom we have great respect, was that Congress did not possess the necessary expertise to determine the type of technology best suited for identifying hazardous materials in transit. We found this to be a compelling argument, and consequently agreed to a compromise proposal which mandated a scientific study into the need and feasibility of automated identification systems to replace the current system of placards and manifests.

As you know, Mr. Chairman, this study was conducted by the National Academy of Sciences and completed in April, 1993. The two primary findings of the study fully endorse the IAFF's long-standing position on the issue of identifying hazardous cargo.

THE CURRENT IDENTIFICATION SYSTEM

First, the NAS study substantiates our contention that the placard and manifest identification system is ineffective. The NAS research found that in 25 percent of consequential highway incidents and 10 percent of consequential rail incidents, emergency responders were unable to obtain necessary information in a timely fashion. The data led the NAS to conclude "the existing system fails with some regularity."

What the report did not fully assess is the effect that this failure rate has on emergency responders. In reality, the placard and manifest system is even more ineffective than the NAS research implies because emergency response personnel, mindful of both the system's high failure rate and the severe consequences of incorrect actions, have become skeptical of the information they receive. Without the operational confidence of emergency responders, no identification system can function.

In addition to severely criticizing the placard and manifest system, the NAS report does offer some recommendations for improving it. Mr. Chairman, it would be a grievous mistake to assume that because some improvements are possible, that the system can be repaired. The placard and manifest system has proven to be a dismal failure, and no amount of minor adjustments will make it work. If there are modifications that would improve the system during the transition period to another type of identification system, then by all means let us do them. But please do not let such band aids distract us from the central truth that the current placard and

manifest identification system must be relegated to the scrape pile as soon as practicable.

AUTOMATED IDENTIFICATION SYSTEMS

The second major conclusion of the NAS study is that there are technologically advanced identification systems that would dramatically improve the ability of fire fighters and other emergency responders to identify hazardous cargo. The NAS found that automated identification systems already in common use by carriers of hazardous materials would be well suited for the information needs of emergency responders. In light of these findings, it can no longer be credibly argued that automated identification and tracking systems do not exist to provide the necessary emergency response information. Indeed, one of cruel ironies of this issue is that the vital information, so elusive to emergency responders, is readily available to the hazmat carriers and shippers and is a routine part of doing business.

The enormous potential benefits of establishing a nationwide automated system led the NAS to recommend that the federal government "immediately" establish one or more start-up projects as the first step toward implementing a nationwide system.

The IAFF fully concurs that any automated identification system that replaces the placard and manifest system should be thoroughly tested and phased-in. As noted above, the key to the success of such a system is the level of confidence placed in it by emergency responders. That confidence will only come from real world experience, and start-up projects are the best way to provide such experience.

While we endorse the concept of beginning with the start-up of an automated information system, it is imperative that this start-up be tested under a variety of conditions. The NAS discusses the option of beginning with one or more start-up projects on railroads because of the relative ease of undertaking such a test. But the issues surrounding identification of hazardous cargo differ significantly from mode to mode. As noted above, the NAS found that emergency responders were twice as likely to encounter difficulties in obtaining necessary information when responding to a highway incident than a rail incident.

Consequently, the IAFF strongly recommends that any start-up system include a test of the automated identification system's effectiveness in responding to hazmat incidents on the nation's highways.

The IAFF further recommends the involvement of rank and file fire fighters in the development and testing of the system. Mr. Chairman, it is imperative to keep in mind who it is that must utilize this system, and not allow operational decisions to be made solely by computer technicians and transportation engineers. The best way to ensure that the system meets the needs of emergency responders is to involve them from the outset. The IAFF stands ready to assist DOT to facilitate the involvement of fire fighters, and we offer our expertise and experience in the creation of this new system.

Finally, the NAS recommends a two year start up project to develop an automated information system. Those with a vested interest in maintaining the current placard and manifest system will no doubt attempt to use this two year window in an effort to further delay implementation of a nationwide automated information system. They must not be allowed to do so. Two years is adequate time to select and get the bugs out of start-up identification system, and the IAFF urges Congress to grant the Department of Transportation full authority to promptly mandate a nationwide automated identification system, covering all modes and carriers, at the conclusion of the two-year period. Technology is developing and improving daily. It is hard to believe anyone would cling to paper placards and manifests in a day of satellite communications and advanced computer technology.

TRAINING

There is a second issue of concern to the IAFF in the area of the transportation ot hazardous materials that is closely related to the first. No improvement in emergency response to hazardous materials incidents will be possible without vastly improved training and equipment for fire fighters and other responders.

The current hazmat training for fire fighters is wholly inadequate. Insufficient money is allocated for such training, and what little money is available is often misdirected. The hazardous materials training requirements and community preparedness mandated by SARA Titles I and III are so widely ignored that any attempt to adhere to them would shut down the entire Superfund program.

In an effort to address this crisis in hazardous materials training, IIMTUSA authorized a program of emergency responder training. Unfortunately, the program

has seemingly been utilized for every purpose other than its intended one: training fire fighters to respond to hazardous materials incidents.

The NAS report recognized the existence of this problem, but failed to offer adequate solutions. NAS's pnmary recommendations in this area are (1) another government study into the problems of training emergency responders, and (2) the development of a hazmat training curriculum. Neither is needed.

Extensive studies of hazmat training programs are already available, most notably the comprehensive Survey of Emergency Response Training Programs conducted for OSHA by the Eastern Research Group. Moreover, the IAFF-developed curriculum for hazmat training has already been formally acknowledged by the US Fire Administration and is currently in use by federal government agencies, all 50 states and several foreign countries.

There simply is no need for further studies or curriculum development. There is, however, a dire need for federal government support for existing programs which conduct this training. Rather than devote time, energy and money to further government studies and curriculum development, the IAFF recommends that these resources go toward the actual training of fire fighters and other emergency responders. Specifically, we urge that direct grants be made available under HMTUSA to non-profit organizations for the exclusive purpose of conducting hazardous materials response training to fire fighters and other emergency responders.

CONCLUSION

Mr. Chairman, HMTUSA made great strides toward creating a unified national system of regulating the transportation of hazardous materials. Today, you have the opportunity to complete the work begun in 1990 by ensuring that emergency responders have the information and training necessary to fully respond to all hazardous materials incidents. The IAFF looks forward to working with you in the coming months to achieve this goal.

I thank you for this opportunity to present our views, and would be happy to answer any questions you may have.

Senator EXON. Mr. Mann, welcome.

STATEMENT OF LAWRENCE M. MANN, COUNSEL, REPRESENTING THE RAILWAY LABOR EXECUTIVES' ASSOCIATION; ACCOMPANIED BY JAMES BRUNKENHOEFER, NATIONAL LEGISLATIVE DIRECTOR, UNITED TRANSPORTATION UNION

Mr. MANN. Thank you, Mr. Chairman. Accompanying me is Mr. James Brunkenhoefer, the national legislative director for the United Transportation Union.

Senator EXON. I saw him come in the room. Thank you.

Mr. MANN. He covers my flank. It is curious, Mr. Chairman. I listened very carefully to the first two panels from the government and the industry, and not a one of them brought to your attention a problem.

It would seem to me that the committee would be interested in where the problems are, in addition to how good things are. I just want to point some of these problem areas out to you for your consideration.

Since the enactment of HMTUSA in 1990, there have been some catastrophic accidents involving a certain type of tank car, which I think is a tremendous culprit. It is a classification known as 111.

This type of tank car, unlike other tank cars, which carry flammables, or explosives, or poisons, does not have protective equipment on it, such as head shields, shelf couplers, and thermal insulation, or double walls. It has even a thinner skin than the other type of tank cars.

I need to point out just a couple of accidents to you. One was in Dunsmuir, CA, in July 1991. That tank car ruptured, and it destroyed 50 miles of the Sacramento River. Everything in that river

was dead. It was the prized fishing river in that State. Still, that river is not back to life. There is some algae growing, but it will probably be 10 years before, if ever, it returns to its original state.

Then, the next year, 1992, in Superior, WI, and Duluth, MI, the same type of tank car, a 111 tank car, ruptured, and there was a massive fish kill in the Nemadji River. That river is recovering much better than the Sacramento River, but still there are enduring problems.

In Dunsmuir, for example, many businesses had to declare bankruptcy, because they were dependent upon the tourist fisherman. They have gone. They just could not survive. Millions and millions of dollars of losses have occurred, because of this one tanker.

It is too bad Chairman Hollings is not here, because in June of this year, there was a derailment in South Carolina. Of seven cars that derailed, three of them were 111 tank cars, and they ruptured.

Senator EXON. All three of them?

Mr. MANN. All three of them. The NTSB did an analysis of 111 tank cars back in 1991, and of the accidents that they investigated, they found that 23 percent of the tank cars that had the protective equipment released a product, whereas 54 percent of the 111's released product.

Everybody who is knowledgeable in the industry, knows that this type of a tank car presents a horror story. If the industry and the Government do not do something about it, I hope that Congress would do something about it.

I would like to just point out that the NTSB has criticized the way the system works. Too much authority is delegated to the private industry to set the standards. You have heard from the Association of American Railroads this morning. They acknowledge that the tank car committee of the AAR is responsible for setting the standards.

As far back as 1969, the NTSB stated that, "It appears that the recommendation of AAR's Committee on Tank Cars is generally determinative of action by DOT."

Again, in 1978, the NTSB said, "Past history indicates that the industry determined DOT's action in tank car specification and modifications."

In 1987, it said, "The FRA has not established direction nor control over the implementation of the authority it delegated to the AAR to assure that public safety concerns are appropriately balanced against industry economic interests for tank car safety."

In 1989, the NTSB stated again that, "RSPA's almost total reliance upon this method," and that is the method of the AAR setting the standards, "to revise tank car standards has placed the agency in the position of continually reacting to individual safety problems, rather than identifying in advance potential problems through safety analysis, and developing solutions."

This needs to be investigated, Mr. Chairman. The NTSB has been criticizing this kind of arrangement since 1969, and labor has as well. Now, that is not the only problem, 111 tank cars. For example, if we did not have train derailments, we would not have spills, and releases of material.

There are no Federal regulations mandating how a train should be assembled. We have conducted an analysis of accidents on the

Southern Pacific Railroad, and we were shocked to find that almost 30 percent of their accidents were due to improper train makeup.

I am not trying to single out Southern Pacific. This exists throughout the industry. They know what they should do, but because of time constraints, and efficiency, economics, et cetera, they just tack on whatever cars they have at the rear of that train, irrespective of the safety considerations.

You cannot attach heavily laden freight cars, or tank cars, or any kind of cars that are full and heavy on the rear of a train, and have light, empty cars at the front of the train. It is obvious what is going to happen, if you hit the brakes going down a hill. Those heavy cars are going to crash into them. That is what is happening out there.

In my formal testimony, I point out that of the training money that you authorized in 1990, not one dime has leaked to the workers yet. We want some of that training money. If the States and the industry get it, we should have the benefit of the training, because we are the ones who are operating those trains.

I point out other problems of inspection of tank cars. They are performed by improperly trained employees. We want those employees trained. If they are going to do that job, and are required to do it, they should be trained to do it. If the Federal Railroad Administration is not going to mandate it, Congress should.

I point out to you the problems with diesel exhaust in trains, the problems of exposure to silicosis, and a number of other hazardous materials. To the worker, it is an extreme problem, because they are the ones that are contracting cancer as the result of it.

Thank you very much.

Senator EXON. Mr. Mann, thank you very much. As you know, we are in the position of putting a new Administrator of the FRA in place. I have been making some inquiries and trying to jar them along on this. Thank you for your testimony—that 111 tank car has been a problem for a long, long time.

I had never thought about the makeup of a train before, but even a layman like me can understand if you have heavy cars on the back and a bunch of empty cars in the middle, you are going to have trouble stopping that train, just because the law of gravity comes into play here.

Thank you for your testimony. I may have some more questions on that a little bit later on.

[The prepared statement of Mr. Mann follows:]

PREPARED STATEMENT OF LAWRENCE M. MANN

My name is Lawrence M. Mann and I am an attorney representing the Railway Labor Executives' Association in this matter. The RLEA consists of the following rail labor organizations: American Train Dispatchers Association; Brotherhood of Maintenance of Way Employes; Brotherhood of Railroad Signalmen; Brotherhood of Locomotive Engineers; Hotel Employees & Restaurant Employees International; Union International Brotherhood of Boilermakers & Blacksmiths; International Brotherhood of Electrical Workers; International Brotherhood of Firemen & Oilers; International Longshoremen's Association; Sheet Metal Workers' International Association; and United Transportation Union.

We appreciate the views of FRA Administrator designee Jolene Molitoris at her Senate confirmation hearing on July 13, that she intends to make FRA pro-active. In view of the history at FRA of being only reactive to specific accidents and problems, Ms. Molitoris' views were refreshing. RLEA pledges to work with her and the Administration to help accomplish the tasks of improving rail safety. Only as a last

resort will rail labor seek safety legislation in situations where FRA and DOT are not responsive to the needs of the rail workers and the public. Not knowing how the current Administration will respond to some urgent hazardous materials problems, RLEA wants to apprise the Subcommittee of some of rail labor's priorities that need prompt attention. We hope the Subcommittee will support our efforts to correct these problems.

111 TANK CARS AND HAZARDOUS MATERIALS TRANSPORTATION

In straightforward language, the railroads are transporting ticking time bombs in tank cars loaded with hazardous materials. They are operating on borrowed time, and unless the Government wakes up and requires safe tank cars on the rails, then inevitably we will witness a major catastrophe.

One need only to review the tragedy which occurred at Dunsmuir, California in July, 1991. There, a Southern Pacific freight train derailed and a tank car ruptured spilling its toxic contents into the Sacramento River. The chemical, metam sodium, killed virtually every living thing in the river for a stretch of 50 miles. The river was one of the nation's premier fishing locations. The prize fish still have not returned to the river, and likely it will take many years for the river to fully recover, if ever. The businesses in Dunsmuir and along the river depended heavily on the fisherman. All, but a few of the businesses, have suffered serious economic losses. Some have been forced into bankruptcy and many are barely able to survive. Last, but not least, there were significant personal injuries resulting from inhalation of the fumes created by the chemical. Incidentally, SP was fined by OSHA for violations relating to SP's employees being exposed to the metam sodium.

The metam sodium was being transported in a tank car classified as DOT Specification 111. This type car has long been known to be unsafe. It is constructed with relatively thin steel and is not equipped with protective features such as head shields, shelf couplers, and double insulation. The one limited exception is that in 1984 the DOT required such protections if flammable gases or ethylene oxide were transported in class 111 tank cars. On the other hand, type 112/114 tank cars which also carry very hazardous cargo have been properly equipped since the early 80's. It took a major explosion in 1978 at Waverly, Tennessee for the Government to do anything about the 112/114 tank cars. The accident experience of 111 and the retrofitted 112 tank cars in the same train accidents have clearly demonstrated the 112 tank cars survived crashes, while 111 cars ruptured. We recognize that metam sodium was not classified as a hazardous material by DOT. However, it was classified by the Coast Guard as hazardous for transportation upon navigable waters. The railroad industry had sufficient knowledge of the potential hazards to the environment and should have taken this into consideration in transporting such a chemical. When a chemical poses a health hazard through contamination of the environment, it should not require a government fiat to force the industry to transport that chemical in a safe container.

Another example involving a DOT specification 111 tank car accident might be informative. On June 30, 1992 a Burlington Northern Railroad train derailed near Superior, Wisconsin/Duluth, Minnesota. A type 111 tank car ruptured spilling benzene into the Nemadji River, and approximately 30,000 persons were evacuated. It resulted in a major fish kill along a 26 mile stretch of the river, and the long lasting effects of the spill are still unknown.

More recently, on June 15, in an accident on the CSX near Carlisle, South Carolina, 3 of the 7 cars which derailed ruptured. Each of the 3 leaking cars were 111's, one of them containing highly toxic hydrochloric acid. Fortunately, the accident occurred in a sparsely populated area of the state.

These examples pinpoint a few of the various safety problems in hazardous materials transportation by rail. First, the industry generally will not make the needed safety improvements unless mandated either by Congress or the DOT. Both the industry and Government have focused primarily on acute hazards such as poisons, flammables and explosives. The time has come for the industry also to direct their attention to the release of chemicals which are hazardous to the environment. Secondly, the Government has delegated too much authority to private industry to establish tank car standards. Regarding this latter point, a tank car builder must apply first with the Association of American Railroads Tank Car Committee for approval of the design, type of materials to be used, and construction. This committee is comprised of tank car owners, shippers of hazardous materials, and various railroads. Because of this industry oriented membership on the Tank Car Committee and the railroads naturally wanting the hazardous materials business, the railroads are greatly influenced to approve whatever the tank car industry proposes. We submit this type of arrangement does not provide adequate protection to public safety

concerns. NTSB and rail labor have questioned this policy for many years. In the NTSB's report on the Laurel, Mississippi accident in 1969 it stated that "It appears that the recommendation of the AAR's Committee on Tank Cars is generally determinative of action by DOT." Again in 1978 the NTSB said "[p]ast history indicates that the industry determines DOT's action in tank car specifications and modifications." See NTSB-EE-78-2 at p. 5. That philosophy still exists at DOT.

On September 29, 1987, the NTSB issued its report on the B&O accident at Miamisburg, Ohio. See NTSB/HZM-87/01. In this report the NTSB found one of the tank cars to be defective, and that the emergency response was hampered by the lack of information about the products and number of tank cars involved. In its conclusion, the NTSB stated that the FRA has not established direction nor control over the implementation of the authority it delegated to the AAR to assure that public safety concerns are appropriately balanced against industry economic interests for tank car safety. The Board said that the absence of effective FRA action for determining the adequacy of the AAR's implementation of the delegated responsibilities has resulted into an industry self-regulated system which does not provide adequate public safety accountability on decisions made affecting tank car designs, construction, and modification.

Also, the NTSB was highly critical of FRA's enforcement procedures. In NTSB/HZM-87/01, the NTSB concluded;

> 16. The AAR Tank CAR Committee provides the primary control over tank car safety both in the United States and in Canada because the regulatory agencies of both countries have delegated their authorities to the AAR.
>
> 17. The FRA has not established sufficient direction or controls over the AAR's implementation of the authority it delegated for tank car safety to assure that public safety concerns are appropriately balanced against industry economic interests.
>
> 18. The absence of effective FRA action for determining the adequacy of the AAR's implementation of the delegated responsibilities has resulted in an industry self-regulated system which does not provide adequate public safety accountability on decisions made affecting tank car designs, construction, and modifications.
>
> 19. The FRA has not established appropriate reporting requirements under the authorities delegated to the AAR so that the FRA would have timely notification of potential tank car safety problems.

In NTSB/HZM-88/01, the Board recommended to the FRA:

> Establish quality control requirements for tank car manufacturers and tank car repair shops sufficient to ensure that actions taken comply with Federal regulations and with any conditions established in Association of American Railroads approvals for manufacture, repair, or modification of rail tank cars.

In its report on the Montana Rail Link accident at Helena, Montana of February 2, 1989 the Board stated that DOT, through the Research and Special Programs Administration (RSPA), has not reassessed tank car standards that existed prior to the creation of the DOT. It noted that RSPA's regulatory changes since 1975 have been in response to tank car accidents, rather than relying upon industry-developed standards, without analysis or established criteria. The Board stated the RSPA's almost total reliance upon this method to revise tank car standards has placed the agency in the position of continually reacting to individual safety problems, rather than identifying in advance potential problems through safety analysis, and developing solutions prior to an accident. (See NTSB Report at p. 66).

The above may be the primary reason for such long delays in issuing final rules relating to tank cars. For example, Docket HM-181 relating to revisions in the classification systems and covering performance standards was initiated on April 15, 1982. A final rule Was published on December 21, 1990. Docket HM-175A was started on May 15, 1990. This concerns the requirements for headshields and thermal protection. Docket HM-201 covering detection of tank car defects was initiated in December, 1987. Still a Notice of Proposed Rulemaking has not been issued.

It is generally recognized that the DOT Specification 111 tank cars are more likely to suffer a release in an accident than various other pressure tank cars, such as 112 and 105. In a 1991 study by the National Transportation Safety Board of hazardous materials transportation by rail, it found that 23 percent of DOT-105, -112, and -114 tank cars were involved in releases of product, whereas 54 percent of the DOT-III tank cars released their contents. Further, the head or shell puncture or failure in 111 was double that of the above other type tank cars. The NTSB concluded that the rate of failure strongly suggests that DOT-III tank cars do not provide as much protection for their products as do the others. See NTSB/S5-91/01 p. 12 (May 16, 1991).

We are cognizant that the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) required DOT to study tank car design, and mandates employee training. The tank car study has been delegated by DOT to the Transportation Research Board of the National Academy of Sciences and a report is expected in the Fall of 1994. However, all concerned already know the problems which are inherent in type 111 tank cars. We urge Congress to act now to correct the deficiencies in type 111 tank cars before another Dunsmuir or Superior/Duluth occurs again, and to require railroads to provide employees with adequate protective clothing at all spills. Waiting at least several more years for something to be done is not in the interest of safety.

The training provisions of HMTUSA are to be applauded. However, training has not been implemented on some carriers (even though required by law) and training will not protect against the deficiencies discussed here.

TRAINING

Section 118 of the HMTUSA establishes a program of grants to nonprofit organizations for training and educating workers involved with transportation of hazardous materials. Subsection (d) requires this program to begin in fiscal year 1993, funded through fees collected from transporters of hazardous materials. From fees collected DOT has awarded $8.9 million to the States for public sector training and planning. The $250,000 specified in 118(d) for training hazardous materials transportation workers has not been allocated. We believe that $250,000 is much too small for the essential objective of training hazmat transportation workers. Nevertheless, even that small amount should be allocated. In the past two years, major spills of hazardous materials in rail transportation have affected workers, communities, and the environment throughout the country. The number of incidents involving hazardous materials occurring in rail and other modes of transportation continues to concern local communities. They feel that the government and hazardous materials transporters are not prepared for serious chemical transportation accidents. An essential step in this preparation is effective training for transportation workers. These workers are most likely to be nearest to the source of a hazardous materials release and to begin the emergency response process. Mistakes in first response can change a small incident into a large-scale emergency endangering workers, the community, and the environment. Thomas Dubose, President of the United Transportation Union sent a letter dated June 3 to Secretary Peña urging him to implement section 118 of HMTUSA. We urge the Committee to prod DOT to promptly implement section 118 to address these important issues in fiscal year 1994 and beyond.

WORKERS' EXPOSURE TO HAZARDOUS MATERIALS DURING CLEAN UP OPERATIONS

Closely related to issue of how to help eliminate spills is that once the spill occurs, much needed attention must be given to the protection of employees. An example will illustrate the problem. On April 14, 1991 a derailment occurred on the Illinois Central Railroad and resulted in a chemical spill. Various rail workers were dispatched to the scene during the clean up operations. Chemical fumes caused many of the employees to experience severe sore throats and chest pains. Working side by side with the railroad workers at the clean up site, were employees from outside contractors. Those employees were equipped with respirators, gloves, rubber boots and other protective clothing and were not harmed. It should be obvious to all concerned that every employee required to work in and around a hazardous materials spill should be fully informed as to the identification of the materials and its hazards. Furthermore, all necessary protective clothing should be provided to each crew member. OSHA requires protections for employees in other industries, but rail workers are left to the whims of their employers.

This issue is not new. We brought this problem to the attention of Congress in hearings during 1989 on proposed amendments to the hazardous materials laws. On the Chessie System two maintenance of way crews were required to clean up a spillage from 6 tank cars. The first crew was not informed as to what they were cleaning up, nor were they provided protective clothing. After a very short period of time, the crew was forced to leave the scene because of severe burning to each one's eyes. One of the crew members has since died from cancer. On the crew that replaced the first one, at least one other member is dying from cancer.

SILICOSIS

There are serious problems on the railroads associated with exposure to hazardous materials which do not result from ruptures of tank cars. One example in point is maintenance of way employees exposure to high levels of silica dust. On February 13, 1992 the National Institute for Occupational Safety and Health (NIOSH) issued

a report of a study of maintenance of way workers' exposure to silica on the Norfolk Southern Railroad. (A copy of the study is being lodged with the Committee for inclusion in the hearing record). NIOSH found that 54 percent of the samples taken from within workers' "personal breathing zone" exceeded or equalled the acceptable levels for respirable silica. Meanwhile, 48 percent of samples taken within three feet of workers' breathing zones equalled or exceeded acceptable levels for silica, and 16 percent of personal samples and 19 percent of area samples equalled or exceeded allowed levels for respirable quartz.

In one area sample, the quartz concentration was 20 times the acceptable range. In another area sample, the cristobalite concentrations were nine times the acceptable amount.

According to the report, Norfolk Southern had known for eight years that its maintenance of way workers were being exposed to high levels of silica dust which can lead to silicosis, a chronic lung disease. As early as 1984, the railroad conducted tests which revealed that some workers were being exposed to mineral dust containing silica which was more than twice the permissible exposure levels established by OSHA.

Silicosis, identified by NIOSH as a carcinogen, results from high levels of exposure to the silica dust. Our preliminary internal investigations, and the results from the NIOSH study, indicate that approximately 10 percent of the employees who were exposed over a period of time will contract silicosis. One limiting aspect of the accuracy is that it takes approximately 20 years after exposure to develop silicosis. Also, the issue of correct diagnosis was a problem previously because the rail workers were unaware that they were being exposed to high levels of silica and because silicosis is sometimes misdiagnosed as either pulmonary edema, pneumonia or TB.

DIESEL EXHAUST

Another problem is the exposure of diesel fumes in locomotives. The concern of the effect of diesel fume and smoke upon railroad workers is not a new issue with rail labor. In 1975, the RLEA filed a petition with the Federal Railroad Administration seeking standards which would reduce the exposure of diesel exhaust in locomotives and cabooses. The FRA took no action on the petition.

The concern over exposure to diesel exhaust is that the particles, which are formed as a result of incomplete combustion, contain several compounds that are known to cause cancer, can deeply penetrate the lungs, and cause increased susceptibility to bronchitis, asthma, pneumonia, and emphysema. More than 90 percent of the soot particles from diesel combustion are small enough to deeply penetrate the lungs.

There have been several diesel studies involving train workers as well as other transportation employees. The studies conducted in the 1950's were inconclusive because they reviewed data when diesel locomotives were not in general service. As you know, diesel locomotives did not become prominent until the mid-1950's. Therefore, it is unlikely that any of the workers studied had been exposed to diesel fumes over a long period of time. A study in 1980 of Finnish railway workers was also inconclusive because of the few number of cancer deaths observed. However, the study did demonstrate that the engineers had the highest rates for cancer. The most recent study in 1983 reviewed retired Canadian railroad workers. The main finding of the study was an elevated risk of lung cancer for those employed in occupations involving exposure to diesel fumes and coal dust.

More recently, doctors at the National Jewish Center for Immunology and Respiratory Medicine in Denver diagnosed 3 trainmen as having chronic asthma caused by excessive exposure to diesel exhaust while they were riding in a trailing locomotive. This analysis was published in the February, 1993, Journal of Occupational Medicine.

We are aware that the FRA has conducted some studies on exhaust fumes and concluded that none of the analysis show that the fumes were above acceptable levels. Candidly, we don't believe the studies were competently performed. If one is going to investigate such a problem, the person performing the test should ride in that trailing locomotive day in and day out just as crews do. The fact that an individual reading or two might not reach excessive levels does not mean that the cumulative effect would not create health problems.

LOCATION OF TANK CARS IN TRAINS

It would seem to be common sense that a placarded tank car should not be allowed to be located at the rear of a train. Nevertheless, some carriers apparently do not perceive the hazard of a potential rear end collision and its consequences

upon the locomotive crew. There are no federal requirements to prohibit such practice.

INSPECTIONS OF TANK CARS

Trains today regularly leave terminals with little or no inspections, many containing defective cars, including hazardous materials cars. Formerly, qualified and trained car inspectors were responsible for performing the detailed tests and inspections required of a train. In recent years, the railroad industry has re-assigned and/or furloughed carmen, and have required operating crews to be responsible for the tests and inspections. However, these operating crews have not been trained to inspect or test for the detailed requirements under federal law. This has resulted in very dangerous train operations, and a particular hazard for communities through wnich trains carrying hazardous materials move.

IMPROPER TRAIN MAKE-UP

Of course, if trains did not derail there would be fewer tank car ruptures and spills. Unfortunately, that scenario will probably never occur. One of the major reasons for derailments is due to improper make-up of a train. This is the result of improper distribution of weight in the train when empty cars are placed in front of heavy loaded cars in a train. The phenomenon causes difficult train handling, resulting in excessive buffing or excessive slack action. This is a primary cause of the previously discussed accident at Dunsmuir, California. In fact during a ten year period, approximately 29 percent of the derailments involving Southern Pacific trains had earmarks of improper train make-up. Another aspect of improper train make-up is whenever long cars are placed directly behind short cars. The Association of American Railroads has guidelines which set forth the proper distribution of tonnage on trains. The problem is that many railroads do not abide by the guidelines, and of course they are not enforceable. It is indefensible that the FRA has no regulations covering the proper make-up of trains, particularly when so many accidents are caused by improper distribution of loaded and empty cars.

Senator EXON. Mr. Skelton, we are delighted to have you here today. Please proceed with your statement.

STATEMENT OF DENNIS SKELTON, ACTING DIRECTOR, NATIONAL FREIGHT DIVISION, INTERNATIONAL BROTHERHOOD OF TEAMSTERS; ACCOMPANIED BY, FRANK GOLDSMITH, DIRECTOR, SAFETY AND HEALTH DEPARTMENT, TEAMSTERS UNION; BARBARA BOYLAN, STAFF EDUCATOR, SAFETY AND HEALTH DEPARTMENT, TEAMSTERS UNION

Mr. SKELTON. Thank you, sir. Mr. Chairman, my name is Dennis Skelton. I am the acting director of the National Freight Division of the International Brotherhood of Teamsters.

I want to thank you for giving us the opportunity to come before the committee to support the reauthorization of the Hazardous Materials Transportation Uniform Safety Act of 1990, and to address some of the issues of greatest concern to our members with respect to hazardous materials in the trucking industry.

With me today to assist is Frank Goldsmith, director of the Safety and Health Department of the Teamsters Union, and Barbara Boylan, staff educator for the Safety and Health Department.

The Teamsters Union represents over 300,000 workers who are employed in the transportation of hazardous materials by highway. These include drivers of tank trucks who haul bulk shipments of hazardous materials in quantities up to 10,000 gallons, drivers and dock workers in the freight industry, and many others in a wide variety of trucking-related enterprises.

Mr. Chairman, appropriate training for workers involved in hazardous materials transportation has been an important goal of the Teamsters Union for several years.

In 1985, we collectively bargained a training program for all our bargaining employees engaged in hazardous materials transportation with the largest nonbulk motor carriers of hazardous materials.

In 1992, we developed the Teamsters Hazardous Materials Transportation Awareness Program to assist in compliance with both the OSHA 1910.120, emergency awareness training requirement, in effect since 1986, and the Department of Transportation HM126F training requirement, effective July 1992, with a compliance deadline of October 1993.

The Teamsters Hazardous Materials Transportation Awareness Program was developed to train teamster members who handle or transport hazmat, primarily drivers, dock, and warehouse members.

While compliance with these training requirements is the responsibility of the employer, we are assisting in this effort to ensure that the training takes place, and that quality training is available to our members.

From September 1992 through July 1993, we have trained 1,358 members in our program, representing over 150 Teamster employers. A copy of our training brochure and training chart is attached to my statement.

An important area of training identified are teamster members who work as casuals. Casuals are drivers and loading dock workers who are referred to hazmat employers by union halls or referral lists, who may work for years only on a day-to-day basis. Rarely is the worker continuously with a single employer for more than a few weeks, yet their employment in handling of hazardous materials can be virtually continuous.

These members have gone untrained, as many hazmat employers do not consider training casuals their responsibility. The Teamsters Freight Division estimates that approximately 25,000 members are utilized as casuals, 5,000 of which are hired out every day.

We requested an interpretation from the DOT Research and Special Program Administration regarding casuals and the HM126F exception that untrained hazmat employees can perform hazmat work under supervision for 90 days.

Since many of our drivers and dock workers do virtually all of their driving and most handling and unloading with no supervision, the Research and Special Programs Administration has concluded that these casual employees cannot drive, load, or unload hazmat alone until they are trained. A copy of the RSPA interpretation is also attached to my statement.

Mr. Chairman, what we are finding is that the training is not taking place for all hazmat employees, and that much of the training facilitated consists of a 45-minute videotape and a quick test.

Even where training content is accurate and appropriate, a training program should allow for questions and answers at a minimum, and ensure updated information on hazmat regulatory changes, which have been known to change on a weekly basis, such as the new requirement for marine pollutants.

While the compliance date for HM126F is only 2 months away, we find it hard to believe that the training will be completed for

all employees engaged in loading, unloading, handling, storage, and transportation of hazardous materials.

In our contact with over 100 teamster local unions regarding this training, we are finding that is not complete, and that many of the members have lingering questions regarding HM181 changes specific to placards and levels of responsibility.

With increased responsibility on these hazmat employees in transportation, it is our proposal that the HM126F training requirement be emphasized in this reauthorization, that training efforts be increased during this time, and that the regulation be enforced, and not delayed any further.

The Department of Transportation enforcement staff has stated that it will be hard to determine if employers are complying with the HM126F training requirement, and that there is not enough enforcement staff or funding to even randomly check for training compliance. They have indicated that when there was an inspection for other reasons, such as a hazardous materials incident, this is when the records for training may be checked.

The recent Transportation Research Board Special Report 239 identifies six areas of information failures when it comes to hazmat emergency incidents in transportation.

One that directly applies to our members is that the vehicle operator is unprepared to provide information in the case of an accident.

With regards to training, the report recommends that the DOT monitor the effectiveness of required shipper and carrier employee training programs, and ensure that the training of shipper and carrier personnel covers communications with local emergency responders.

Mr. Chairman, we feel that the emergency incident review that the Transportation Research Board report emphasizes is the tip of the iceberg when it comes to hazardous material incidents.

As we know, not all incidents are reported, and nonemergency incidents often still mean exposure to a hazmat handler or driver.

We cannot emphasize enough the need for thorough training of these employees. We recommend that with reauthorization of HMTUSA, the Department of Transportation be funded to randomly check employers in freight for compliance with HM126F training, and that efforts in routine and roadside inspections be streamlined to include a check for this training as well.

In addition, effectiveness of HM126F training should be monitored to ensure that appropriate and updated programs are being facilitated in the field. We recommend that the HMTUSA hazmat employee training grant be utilized as part of this monitoring effort.

The Hazardous Materials Transportation Act of 1990, Section 118, was developed to provide grants for training and education of hazmat employees engaged in the safe loading, unloading, handling, storage, and transportation of hazardous materials and emergency response.

An appropriation of $250,000 was to be available per fiscal year from 1993 through 1998. Section 118 is separate from aection 117A, which is grant funding for public sector training and planning.

To date, section 118 funding has not been appropriated and no mechanism set up for a granting system for hazmat training under this section. We recommend that funding be authorized and a system for grants application be set up immediately. We also propose that the funds be increased to $10 million, in order to provide as much training as possible.

Hazardous materials training funded through section 118 can also be utilized to evaluate other training programs, as well as provide another source of training materials for employers.

Can I go on?

Senator EXON. How much longer do you have, Mr. Skelton?

Mr. SKELTON. I just have a couple of pages.

Senator EXON. Go ahead.

Senator BURNS. We have a hot dog lunch at about 11:30, and I have never missed a meal, nor do I plan to. [Laughter.]

Mr. Chairman, my last area of comment pertains to the Transportation Research Board Special Report 239. We would like to go on the record in support of the recommendations in the study with regards to the tracking of hazardous materials in transportation.

If you ask any driver or dock worker if they know exactly what is on the back of the trailer when it comes to hazmat, they will tell you it would be difficult to be sure.

Even with the proper shipping papers, correct labels, and placards, there can always be an exception that prevents proper identification.

Mixed loads of hazmat are fairly common in the industry, and the "dangerous" placard is all that is required in most instances. A "dangerous" placard does not tell a firefighter a whole lot.

Then there are limited quantities and consumer commodities of hazmat, which are packaging rules that exempt hazardous materials from shipping paper entries, or a label, and placards. Then there are containers, which are sealed trailers shipped intermodal, that a driver will never see the inside of.

In the report, truck drivers were identified as the most important information source by more than one-third of the responders interviewed in case studies.

When informed and the documentation available, they provided shipping papers, described the general hazards of materials, and properly notified responders to incidents.

This is what should be expected in all cases, and the only way to move toward proper response is by having the documentation available and properly trained workers throughout the entire hazmat transportation system.

We support the recommendations addressed in the study for startups of automated information systems on hazmat in transportation.

We also support the recommendation for the Department of Transportation to alleviate the six categories of information failures identified through changes in regulations, such as establishing higher fines for certain hazardous materials identification violations, to more effectively enforce existing standards, and for improved training for hazmat handlers, emergency responders, and inspectors.

This concludes my statement, finally.

Senator EXON. Thank you very much.

Mr. SKELTON. Thank you very much. I will try to answer any questions you may have.

[The information referred to follows:]

Teamster Transportation Training, September 1992–July 1993

	Local unions trained	Where training took place	Dates of training	Total workers
9/1992	Local Unions 89, 235	Louisville, KY; Rockford, IL	9/13, 20	214
1/1993	Local Unions 135, 407, 63	Indianapolis, IN; Cleveland, OH; Rialto, CA.	1/22, 23, 25, 30	100
2/993	Local Union 40	Mansfield, OH	2/20	38
3/1993	Local Unions 135, 110, 728	Muncie, IN; LaPorte, IN; New Enterprise, PA; Atlanta, GA.	3/13, 20, 27	147
4/1993	Local Unions 402, 813, 515	Muscle Shoals, AL; Garden City Park, NJ; Chattanooga, TN.	4/16, 17, 23	49
5/1993	Local Unions 959, 236, 85, 43, 505, 637, 769.	Clear, AL; Paducah, KY; San Francisco, CA; Racine, WI; Huntington, WV; Zanesville, OH; Miami, FL.	5/5, 6, 8, 9, 22, 23, 26, 29	369
6/1993	Teamster San Diego Training Trust.	San Diego, CA	6/25	26
7/1993	Local Unions 89, 100	Louisville, KY; Cincinnati, OH	7/11, 17	415
Total				1,358

LETTER FROM THOMAS G. ALLAN, ACTING DIRECTOR, OFFICE OF HAZARDOUS MATERIALS STANDARDS, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

JUNE 7, 1993.

Mr. VERNON MCDOUGALL,
International Brotherhood of Teamsters,
Washington, DC 20001

DEAR MR. MCDOUGALL: This is in response to your letter dated March 31, 1993 regarding training requirements in 49 CFR Part 172, Subpart H. Specifically, training of "casual" workers who are referred to hazmat employers by union halls or referral lists. A "casual" worker being a truck driver or loading dock worker who may work for years only on an as-needed basis. Rarely, is the worker continuously with a single employer for 90 consecutive days. Yet their employment in hazardous materials transportation is virtually continuous.

Your questions are paraphrased and answered as follows:

Q. Are these employees subject to § 172.704 or are they exempted as long as they never work 90 days continuously for the same employer?

A. The term "hazmat employee," as defined in § 171.8, includes any person who in the course of employment perform functions directly affecting hazardous materials transportation safety, including a "casual" worker. The employee's functional relationship to hazardous materials transportation safety, rather than duration of the work assignment is the primary factor in determining whether an individual is a "hazmat employee."

Q. If these employees are not exempted, at what point must a hazmat employer ensure training as required in § 172.704(a)?

A. Each hazmat employer must certify that each of its hazmat employees has been trained and tested within 90 days of employment as required by § 172.704(c). While responsibility for providing training remains with the hazmat employer, the required training can be provided by trade associations or any other organization offering training that meets the needs of hazmat employees. Unions may train, test and maintain records on behalf of employers. The training and testing must be documented through certification and a record must be maintained for each trained hazmat employee as required by § 172.704. Relevant training received from a pre-

vious employer or other source may be used to satisfy the requirement, provided a current record of training is obtained from the hazmat employee's previous employer.

Q. Under § 172.704(c)(1)(iv), a hazmat employee can only perform specific functions prior to completion of training if under the supervision of a properly trained and knowledgeable hazmat employee. Many drivers do virtually all of their driving and most loading and unloading with no supervision. Does this mean, regardless of the 90 days, "casual" drivers cannot drive, load, or unload alone until they are trained?

A. Yes. It is imperative to ensure that hazardous materials functions are properly performed. Nothing in the training rule relieves a hazmat employer from the responsibility to ensure compliance with the HMR regardless of whether the required training has been completed. The Department of Labor's Occupational Safety and Health Administration and the Environmental Protection Agency, Federal Highway Administration's Commercial Driver's License, or other mandated training requirements may be used to the extent that they satisfy the general awareness, function specific, and safety training and testing requirements. Whether additional training is required is determined by the employer dependant upon the employee's hazmat functions.

If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

THOMAS G. ALLAN,
Acting Director, Office of Hazardous Materials Standards.

["Teamsters Hazardous Materials Transportation Awareness Course" (brochure), may be found in the committee's files.]

Senator EXON. Senator Burns.

Senator BURNS. Thank you very much. I am interested, Mr. Nesbitt, in your comments on the dollars for training people being used for other things.

I would ask all of you—it seemed like you had the same concerns—for some documentation on that. If that is what the money was for, I am a great believer in training.

Mr. Mann was involved also, remember, in the thing with the end of train braking devices, and so was I. We have not forgotten about that, as far as that is concerned.

Regarding the tracking system that you are recommending—we are seeing more of this come into play every day, because as the technology is being used more, the cost of that technology goes down to where it becomes affordable, Mr. Nesbitt. I am part of telecommunications, and the chairman here also is, so, we are involved in a lot things involving telecommunications, as far as in other areas.

But in this particular case, this particular program, do you have any idea what the cost would be that you are recommending?

Mr. NESBITT. I think the NSA study for rails recommended I think somewhere between $4 and $7 million for the startup costs for the program, the startup program project. I would assume there would be a similar cost for trucking.

Senator BURNS. Who would pay for that?

Mr. NESBITT. Well, Congress would authorize it, or it would come out of the Department of Transportation's budget to do that startup project.

Senator BURNS. Thank you very much. I would then shift over to Mr. Skelton. I just told the chairman here, and I am just drawing out a thought, that your organization, which employs very good, professional drivers, and I want to congratulate you on it—

because you yourself have some good training programs to provide to those drivers.

How extensively has the Teamsters Union gone in and said, OK, we have a problem here with some of the drivers. Are you doing anything, with respect to the union, in training your drivers better, because you are offering people up that have a skill, a very important skill?

Mr. SKELTON. Under the direction of Frank Goldsmith back here, the safety and health department has expanded the brochure that is attached to my statement.

We have expanded our training and have made it available to more members. As most of you probably know, we are still in a transition mode within our union, and we are redeveloping, and redesigning a lot of departments. Safety and health is one of them.

We are trying to get as much information out to the people who work with it every day. We are making training available, but unfortunately staffing and funding are not the best right now, but we are going as many places as we can when requested. We have been to I guess over 100 locals already to make this training available. We have people traveling every day.

Senator BURNS. Well, I would say we have a shared responsibility here. We have a shared responsibility to the public, and we also have the responsibility, I think, to the drivers.

We must not by any means put that on the back burner, the education of our drivers. I think that is a shared responsibility between not only the operator of the trucking company, but I think it is also the responsibility of our driver organizations, our unions, that we provide as good a driver as we possibly can.

And, again, these areas where known violations, or where we could do better, I would sure like to have some documentation on that, because we want to try to address as many of your concerns as we possibly can, and still stay within the cost effectiveness of moving materials across this country, whether they be hazardous or nonhazardous. That is where I am coming from.

Maybe a commonsense approach to this thing most times works best. The more documentation we have of that—and Mr. Emmett, I will never forget that thing down at the Department of Transportation—were you down there that morning——

Mr. EMMETT. Yes.

Senator BURNS [continuing]. When I went down there?

Mr. EMMETT. Yes, sir.

Senator BURNS. I could not believe that. But we are, keep in mind that we are, blessed in this town with a lot of folks that can say "horse" in nine different languages, and then still ride a cow to work.

We do not approach it in a very commonsense way every time. Thank you very much, Mr. Chairman.

Senator EXON. Thank you, Senator Burns. Let me return to this problem with the 111's, as you call them, the 111 tank cars. Are there other tank cars that are used extensively by the railroads that are much superior to the 111's, Mr. Mann?

Mr. MANN. Yes, sir. The 111 is known as a general-purpose type tank car. They throw in that tank car just about anything they can get away with. Whereas, if you have explosives, for example, they

are typically carried in what is known as a 112-, 114-, or a 105-type tank car. Those tank cars have shelf couplers, head shields, thermal insulation.

That is what the NTSB has been saying to the Department of Transportation: Do something about these other cars that are causing environmental hazards, not only explosions, but we have environment problems as well as hazards to people.

The industry, in certain instances, does a good job. The DuPont Co. does an excellent job in their tank car distribution and their construction. They even have standards that are greater than the Federal standards. But the problem is, you have the industry self-regulating. That is where the root of the problem is. The AAR Tank Car Committee sets the standards.

I would hope that Congress would look at this in some depth, and try to correct the underlying problem that has been pointed out by the NTSB on a number of occasions.

Senator EXON. Maybe I should ask this question of both Mr. Skelton and Mr. Nesbitt. You have heard the references to this one particular tank car that seems to be causing a major problem when accidents happen.

What is the experience with truck tank cars? Are they more standardized, and do we have a similar situation with truck tank trailers as the testimony seems to be indicating with railroad tank cars?

Mr. SKELTON. I do not think we have any specific information with us today on tank cars, but we would be willing to go back and get as much as we could and provide it to the committee.

Senator EXON. What do you say about that, Mr. Nesbitt?

Mr. NESBITT. I do not have any specific information on the specific kinds of tank cars, or problems, something that we could look at. We usually do not keep that kind of data.

But I would like to make a comment on the Sacramento incident, because even though Mr. Mann mentioned it was a particular type of tank car that leaked, our problem in the Sacramento incident, which resulted in a 50-mile kill in the river, was that we did not know what was in that tank car. So, it continued to pour into the river, and by the time we found out what it was, the 50-mile kill was a done deal.

Had we known, I mean the simple solution was to dilute it with water, and you would not have had the 50-mile kill, but we did not have the information. Now, we are told that other people had the information, which is great, but we did not have the information.

Senator EXON. You did not have it.

Senator BURNS. What year was that accident?

Mr. NESBITT. 1991.

Senator EXON. 1991.

Mr. NESBITT. July.

Senator EXON. Thank you, Senator Burns. Mr. Collins, in the testimony of Mr. Emmett which you probably heard earlier, it was suggested that DOT put greater enforcement emphasis on shipper compliance with hazmat safety regulations. Is this, in your view, a significant problem? In addition to that, Mr. Rothberg, of CRS, suggested that a shipper hazmat safety rating program be created. What is your response to these suggestions or proposals?

Mr. EMMETT. Mr. Chairman, I believe a workable solution could be arrived at, if, in reporting the incidents, there is a tracking, and if a particular shipper is repeatedly identified as being a problem shipper with regard to hazmat.

I do not think there would be any concern on the part of the league with coming up with a rating system for those shippers that are identified through that process.

We would have a problem if you suddenly tried to rate every shipper in the United States, because that would be just an insurmountable task.

But, if through the normal process of reporting incidents, a shipper is flagged as repeatedly showing up, we would have no problem at all with giving that shipper a rating that would be, shall we say, less than complimentary.

Senator EXON. Mr. Mann, in your written testimony, you cited two incidents where rail maintenance crews were required to clean up spillage from tank cars without suitable protective clothing. Do you believe that these episodes underscore a larger and a more widespread potential problem, if not a real threat? Could you provide us with any other examples of such situations occurring?

Mr. MANN. For the written record I will, Mr. Chairman, but in general, you do not have knowledgeable rail workers when they are exposed to a hazardous material spill. They are not trained.

The rail unions received a grant couple of years ago to start training the workers, because the industry was not doing it for them. That training has been going on throughout the country.

There has been an excellent response by the union membership. The training program has been heavily attended. And they are finally learning, as opposed to going to a tank car and inspecting it once you see some smoke, to run away from it and not try to be a hero.

They are finally learning how to respond, but it is not because of the industry is teaching the workers. It is the unions themselves doing it, and trying to inform employees how to respond.

We find typically, when a rail crew is required to go out to a cleanup, and you have private industry also out there, you will see private industry with all protective clothing, with gas masks, and everything else, where the rail worker is in his jeans trying to clean it up.

Something needs to be done. Certainly, training is the key to that, being knowledgeable of what they are being exposed to, and for the industry to wake up and say, we have to do something to protect you; otherwise, we are going to have continuous problems, such as employees contracting cancer, which we have documented for the committee.

Senator EXON. Let me ask you this question, Mr. Nesbitt. I will bet your people are not out there in jeans in such situations, are they?

Mr. NESBITT. No. They are not out there in jeans, but unfortunately, sometimes, first of all, we do not know what we are dealing with, so we have done extensive work with our membership, to instead of when you have a hazmat incident to rush in and try to do something, you should take a measured response and a measured approach to it, and encourage people to make sure you have

the proper protective gear and equipment. But if you do not know what you are dealing with, sometimes you do not know what kind of equipment and gear that you may or may not need.

We have taught them to take a minimal approach, to be cautious, take your time, try to get all the information, make wise decisions.

Sometimes we are severely criticized by Governors—you can appreciate that—and mayors who say, "Well, gee, you close down the highway for 8 hours, you evacuated 8,000 people out of this town, and it was not necessary."

But you can imagine the criticism we would get if we did not evacuate the 8,000 people, and we had a chlorine cloud, and 8,000 people were killed.

So, when we err, we err on the side of caution. But it has been a real education to try to train. There are fire departments, I am sure, in your State, that we do not represent, volunteer firefighters, who do not have any training, and they fight a hazmat incident wearing rubber boots, and rubber coats, and rubber gloves, and that should not be happening.

If I could make just one other comment, you talked about the young firefighter from Nebraska who had had hazmat training, and we were happy to do that.

The sad part is, Mr. Chairman, the money under HMTUSA for training of emergency responders, we cannot get that money to train that firefighter from Lincoln, NE.

He was trained with money we either got from NIOSH, or NIHS, to do a limited amount of training of a curriculum that we have developed for firefighters that is used by the U.S. Fire Academy, by Federal agencies, in almost all 50 States as a recognized training curriculum.

What we are saying to you is we want to be able to get some of the money to train firefighters like that who can then go back to their own fire departments and train other firefighters, and do the necessary training that we need to be done.

Senator EXON. Is there any coordination or cross-training between the firefighters and the union workers on the railroads? It seems to me that there is some potential there——

Mr. MANN. I am not aware of any.

Mr. BRUNKENHOEFER. Senator, there are some instances where the rail management contacts the fire department and has some coordination there. Frequently, though, when we have a problem, there is not anybody from that level of management immediately at the scene, and the decisionmaker is not on the scene.

The decisionmaker is at the other end of a telephone or a radio at a central dispatching area, where the concern is—a transportation company is in the business of moving. It is not in the business of hazardous materials handling.

So, the automatic reaction in that circumstance is to do as much as you can, as fast as you can to get everything moving again.

So, what we have accomplished through some of the training that we have related to you today is the person at the scene having enough knowledge to be able to start asking the central point: Are these decisions that you are making way over there really what

you want to be making, considering here what we have at the scene?

If you order me in at this point to start performing these functions, whatever they are, that may help your trains run, or your trucks run, or whatever, is this the best thing to be doing overall?

In some cases they are ordered in, and then when the find out what the problem is, they are ordered back out, because the stress on the central dispatcher is to get the trains running.

So, what we need is, yes, some coordination, not at the level of where the corporate headquarters, and possibly the fire chief, but we need more understanding of where we can say, at least in the field, is this what we really want to be doing, until you have a command post here, located at the scene, I went through this in San Antonio.

You end up with the problem of who is in charge. You have to establish a command post that deals with the problems that the firefighters have, and Mr. Nesbitt, about bringing these people out, and what the railroad needs to do in the coordination of all of those people involved.

Unfortunately, before those people are on the scene, life-threatening decisions are being made that affect their lives at the scene by people who are far removed, simply because the stresses are very different on the decisionmaking process.

Senator EXON. To help out the clerk, that was Mr. Brunkenhoefer's testimony. He is associated with Mr. Mann. Thank you for your testimony on this.

It seems to me that, obviously, firefighters are professionals at fighting fires, and have extensive training with chemicals, and so forth. It's second nature to them to do these kinds of things carefully.

The opposite is true with the truck driver, or somebody working for the railroads. As you say, Jim, they keep things moving. I do not expect that we can or should ever require as much extensive training on hazardous materials for railroad workers and people working for the truck lines. However, we may be falling down somewhat in some basic training which we should be giving to truck drivers and railroad people who are not as likely to come into contact with hazardous material as a fireman, for example. They should have some basic training as to what the do's and don'ts are. Maybe we have not done enough in that area.

I suggest that if you think we have not, maybe we ought to start coming up with specific programs to do that. In other words, a little first aid training is needed, if you will, with regard to hazardous materials, which I suspect most of the truck drivers and most of the crews on the trains do not know enough about.

There will be additional questions for the record. Once again, we appreciate your coming in with the excellent testimony this morning. We thank you for that. We would ask that you respond to the writtent questions for the record as quickly as you can.

Once again, we thank you, and we are adjourned.

[Whereupon, at 11:30 a.m., the hearing was adjourned.]

APPENDIX

PREPARED STATEMENT OF JOHN F. MULHOLLAND

My name is John Mulhoiland. I am President of Source Data Network, the company which developed the Computerized Telecommunication Central Reporting and Data System (the "System").

Mr. Chairman, I very much appreciate this opportunity to offer testimony to you and your committee. In doing so, I express my support of the reauthorization of the Hazardous Materials Transportation Act, and urge that specific language be Included to mandate the implementation of the System. Others may testify to the fact that no such system presently exists in a satisfactory or operational form, and may quote from the recently released Special Report 239 of the National Academy of Sciences Transportation Research 3oara to support this position. Mr. Chairman, this is definitely not the case.

Special Report 239 gives the history of a failed, ineffective and inappropriate system that was condemned back in 1983 when Special Report 197 was released. The two and one half year study which resulted in SR 197 made eight serious recommendations, (Exhibit C, attached) which were similar to those made in SR 239. On page 24, Vol. 1 of SR 197, the first three paragraphs under "Emergency information" contain the first clues that the Chemtrec system was inadequate. The report referred to the fact that emergency response guidebooks are only published at three year intervals, with 300 to 500 new chemical compounds coming into use every year. This three year delay of publication means that as many as 1500 chemical unknowns may be in the transportation system, the contents of which remain unknown to those first responders who need to know instantly what the hazardous cargo is. Only a computerized telecommunication system, containing current reliable data, can make this information immediately available at the incident site. The placard system has many problems (as noted in SR 197 and SR 239) and results in uncertainty in the minds of first responders as to the reliability of the placard system.

Page 25 of SR 197 under RECOMMENDATION 4 (first paragraph) calls for the technology that we devised when we developed the first Computerized Telecommunication Central Reporting System and Data Center back in 1983. Page 64 Vol. 2 of SR 197 (the second paragraph) reveals, in simple terms and technology, what my colleagues and I have accomplished in more sophisticated technology, and is reflected in H.R. 2584.

Source Data Network, utilizing the finest brains in the computer telecommunication industry, including Dr. Paul Fingerman of the Boeing Company, and Dr. Milt Zohn of the Martin Marietta Company, became the creator of the System back in 1983. This system was the primary subject of SR 239, yet for reasons unknown to us, SDN was not asked to appear before the TRB. Only when communication was initiated by us with the staff of the TRB, (letter attached) was an invitation to appear extended. Why no mention of my testimony or the SDN System was made in the report is a matter of no small conjecture on our part.

Public Law 93-633, Section 102 states that the purpose of the Transportation Act of 1974 is "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." Section 109(d)(2) states that "The Secretary shall establish and maintain a central reporting system and data center so as to be able to provide the law enforcement and fire fightIng personnel of communities, and other interested persons and government officers, with technical and other information and advice for meeting emergencies, connected with the transportation of hazardous materials;".

In essence, SR 239 does not dispute the need for modern technology, but section 4 of the report explores the possibility of the chemical industry and its surrogates developing a system which, like the present ineffective one, would be completely under Its control, and spend not its own money, but hundreds of millions of tax dollars in R&D. This would allow them to continue to control oversight over their own

Industry as they have done since March 13, 1980 when RSPA, under the direction of DOT, signed the STATEMENT OF FORMAL RECOGNITION AND ATTENDANT UNDERSTANDINGS with the Chemical Manufacturers Association Inc.

This document has permitted thirteen years of self-supervision over its own ineffective system, continued use of which was protested by the international Association of Fire Fighters. This total, self-serving control by the chemical industry has stifled support for an advanced computerized telecommunication technology, rendered useless the sophisticated computerized data bases of the National Response Center (NRC) and emasculated the authority and emergency response capabilities of the Federal Emergency Management Agency (FEMA).

In its recommendations, SR 239 all but ignores the availability of a state-of-the-art System which already exists. Specifically, the report suggests that $300 Million should be made available to fund a two year study to develop a system which would do what the Source Data Network System was ready to do ten years ago. When life and property are still unprotected and the lives of fire fighters and other emergency response personnel are in constant jeopardy—as those brave men in Kansas City who lost their lives in 1988 because of 10 years of inaction—further delay in adopting an effective reporting system is simply not acceptable.

The Source Data Network System was developed in the private sector with private funds, therefore making unnecessary the need for federal dollars, as suggested in SR 239, to reinvent what has already been accomplished and proven.

SDN system wIll function with industry user fees on a "per manifest" basis and, therefore, doesn't require Federal funds to operate. Adoption of this system will result in the savings of $12.2 billion annually to the industry. Additionally, it is setup to provide a trust fund throgh which millions of dollars will flow to 39,000 communities to train, equip and purchase the appropriate telecommunication equipment, and to provide funding to governors of states in order to comply with the requirenents of SARA Title III, which is currently unfunded. With the implementation of the System, the National Response Center, becomes a viable organization as was intended by CERCLA by being able to interface FEMA, the Army Corps of Engineers and other federal authorities with state, county and local response facilities as well as Military Commands in the case of catastrophic natural disasters such as Hurricane Andrew. SDN is truly the "missing link" which can bring the federal disaster response mechanism into its maximum potential in full compliance with all federal law, including HMTA, CERCLA, and SARA Title III.

Following Hurricane Andrew, millions of people watching CNN witnessed Andrew Card, then Secretary of Transportation, as he stood in the debris of devastated Homestead, Florida, and decried the lack of a telecommunication system that could give definitive data from the incident site to the county and state emergency response facilities in order to trigger the time when federal troops should be called in to aid in the response process. The whole country was aghast as to why, in this age of high technology, such a system was not already in use. Mr. Chairman, with the immediate implementation of the SDN System, the answer to that question would find life tomorrow, without requiring the expenditure of one cent of tax payer dollars.

Attached as Exhibit A you will find my critique of the numerous inaccuracies, assumptions and conclusions of SR 239. In my opinion, this report is not scientific in nature, and has done a terrible disservice to our country.

In conclusion, I respectfully request that this committee consider mandating the use of proven, present technology which meets the letter as well as the spirit of Public Law and Congressional intent expressed over the past 19 years. This country and emergency response workers have waited long enough.

Thank you for your courtesy.

LETTER FROM ROBERT A. MATTHEWS, PRESIDENT, RAILWAY PROGRESS INSTITUTE

AUGUST 3, 1993.

The Honorable J. JAMES EXON,
U.S. Senate,
Washington, DC 20510–6125

DEAR MR. CHAIRMAN: 1On behalf of the Railway Progress Institute's Committee on Tank Cars (RPICTC), the following comments are submitted for the record on the hearing on July 21 by your Subcommittee to reauthorize the Hazardous Materials Transportation Uniform Safety Act of 1990.

RPICTC members own, manage, and full-service lease 125,500 tank cars, approximately two-thirds of the existing tank car fleet. The members are ACF Industries,

Incorporated; General American Transportation Corporation; GE Railcar Services; Trinity Industries, Inc.; and Union Tank Car Company.

The RPICTC associates itself with Edwin L. Harper's testimony to the Subcommittee regarding the good safety record of the railroad industry, particularly, in moving hazardous materials. We endorse Mr. Harper's suggestion that the legislation you are considering need only be a simple reauthorization bill.

Our Committee is concerned with the testimony of Lawrence M. Mann in part criticizing private industry for "not making needed safety improvements unless mandated either by Congress or the DOT." Enclosed is a copy of a report produced by our Committee entitled "Tank Car Safety" which explains in detail the safety improvements made to tank cars since 1970 that are a major reason the tank car hazardous materials record has improved so dramatically. A good many of these improvements were made without any government mandate and were made as a result of findings of the RPI/AAR Tank Car Safety Research Project which we co-sponsor with the railroad industry. It should be pointed out that the federal regulations define only minimum packaging requirements.

Mr. Mann also commented on the DOT specification 111 car. An inter-industry task force of the railroad industry, chemical industry, and our Committee is studying 111 cars and the commodities they carry.

Sixty percent of the 111 cars (approximately 95,000 tank cars) transport non-hazardous commodities such as corn syrup, vegetable oil, and kaolin clay which in no way imperils the environment or endangers the public.

With respect to the balance of the DOT 111 tank car fleet, the RPICTC urges that your Subcommittee not take any precipitous action without a thorough analysis of the accident history of those cars and the commodities they carry.

The RPICTC appreciates your consideration of our comments on tank car safety and pledges its support to work with you to continue improving that safety.

Sincerely,

ROBERT A. MATTHEWS.

["Tank Car Safety," a publication of the Committee on Tank Cars of Railway Progress Institute may be found in the committee's files.]

PREPARED STATEMENT OF ROBERT J. HASKEN, GENERAL ELECTRIC CORP.

As a major manufacturing industrial concern GE is affected by most of the regulatory activities of the Department of Transportation under the Hazardous Materials Transportation Act. GE has followed the development of hazardous materials legislation for a number of years and has participated by offering its views on the 1990 amendments as well as the technical revisions adopted thereafter.

Our experience under the amended law has been good, and we offer no major changes to that law. GE has identified six aspects of the existing law, however, that pose problems which should be addressed in any legislation reauthorizing this statute and making refinements to it. We also offer recommended solutions to those problems. Suggested statutory language to implement these recommendations is attached.

I. Problem: DOT, OSHA and EPA duplication of employee training. Each of these federal agencies prescribes training for what often turn our to be the same employees. Examples of such employees are those working on transportation docks, in ports and in warehouses and distribution centers. Within GE, thousands of employees are affected. Although the overlap of agency regulatory programs affecting these employees is substantial, often very similar training given under one agency's program is not credited by another. While DOT appears to give credit to equivalent programs, few if any have been deemed equivalent because of the statutory elements of testing and certification in the DOT program. As a result, multiple training programs must be given on the same sub ject to the same employees. The duplication of effort is both massive and unnecessary.

Recommended solution: The statutory revision suggested by GE would require DOT to remove duplication of training effort (not just to avoid direa regulatory conflicts), and also would eliminate the considerable expense and inefficiency regulatory duplication entails. An employer's compliance wig OSHA training for hazard communication as well as emergency response should exclude the need to provide duplicative DOT training for the same employees.

II. Problem: Lack of clarity as to the responsibility for shipping hazardous materials. The current phrasing of the statute declares that a person is regulated if they "cause" a hazardous material to be transported or shipped. This term, repeated

throughout the statute, has fostered confusion ever since it entered the law. For example, does someone who orders a product over the telephone "cause" it to be shipped, even though that person is not otherwise involved in the classification, packing, marking, labeling, placarding, documentation or transportation of that product? If indeed they "cause" the shipment or transportation. could they be cited for any violations, especially if certain required markings, labels or documentation are absent? Need they be trained as "hazmat employees". even though they perform no tasks under the regulations? Need they be registered as shippers?

DOT has addressed some of these concerns through the regulations, which are phrased in terms of persons who "offer" hazardous materials for transportation. The statute, however, does not use the terms "offer" or "offeror" and, particularly with respect to statutorily-mandated requirements such as training and registration, continues to foster confusion and potential liability.

Recommended solution: GE recommends that the ambiguity be removed by placing the responsibility clearly upon the person who "tenders" or who "offers" hazardous materiais for transportation. This terminology is consistent with that used in the DOT regulations, as well as the recent Intermodal Safe Container Transportation Act of 1992 (P.L. 102-548, 106 Stat. 3646), and would bring clarity for both the agency and regulated parties, as to the assignment of responsibility for compliance.

III. Problem: Mandatory registration of foreign shippers, carriers and governments. The phrasing of the statute with respect to mandatory registration of certain parties leaves unanswered the question of whether registration of non-U.S. resident shippers and carriers is required. DOT apparently has determined that registration of foreign shippers of hazardous materials to the U.S. is mandated by the sVatute. Numerous foreign governments have voiced concern on their own behalf and on behalf of their resident industries. These governments have pointed out that the U.S. government is exempt from registration, but that foreign governmerns, including their defense departments. are not. The registration rulemaking record also contains letters of concern on the part of the U.S. Department of State, regarding the potential both for foreign goverment retaliation in the form of preconditions for import, and for adverse impact under the GATT agreement. Examples of these letters are attached. Retaliatory preconditions to export of American goods would be a far more serious problem than the modest revenue that would be fathered by compelling DOT registration of foreign shippers.

Recommended solution: GE recommends statutory revision to provide DOT with discretion to relieve foreign shippers. carriers and governments from mandatory registration.

IV. Problem: Potential EPA and DOT redundancy in environmental regulation. Under the current statutory and regulatory regime. the identification of materials hazardous only to the environment is the primary responsibility of the Environmental Protection Agency. Once a material is designated by EPA, DOT must list and reguiate that substance as a hazardous material in transportation under the requirements of existing 42 U.S. Code 9656. These materials are listed by DOT in 49 CFR 172.101, Appendix I. In recent DOT rule making Docket No. HM-211 on marine pollutants (January 31. 1992; 57 Fed. Reg. 3855, and November 2. 1992: 57 Fed. Reg. 52931), DOT expressed the intention to independently initiate their own environmental criteria and regulations.

There is no indication that DOT's entrv into the environmental regulatory fleld would invotve more effective coordination with EPA, or anything other than the generation of parallel yet differing requirements from another source. This redundancy in agency eftbrt would provide another source of comusion, cost, and potential for inadvertent noncompliance.

Recommended solution: GE recommends the adoption of statutory language to limit the identification of materials which are hazardous only to the environment to the Environmental Protection Agency, where this function currently resides.

V. Problem: Lack of timeliness in DOT preemption determinations. One goal of the 1990 statutory amendments was facilitation of administrative determinations of preemption. Among other things, timely administrative determinations provide an effective alternative to judicial litigation. The 1990 changes were beneficial, but the statute lacks a date by which DOT must respond to requests for determinations. As a result, numerous applications remain pending and unanswered for years. In the interim, affected industries and locai governments are left in limbo. Their only alternative is the initation of a judicial proceeding—contrary to the original legislative intention. in order to enhance the value of binding administrative determinations and to reduce judicial conestion, it is necessary to speed the DOT process.

Recommended solution: GE recommends a revision to the statute to provide a deadline for DOT's administrative decision, or Federal Register publication of the reasons why a more timely response is impractical.

VI. Problem: Inadequate opportunity for public and agency participation in rule making affecting State and local permitting and registration. Paragraph (d)(1) of Section 22 of the HMTUSA, pertaining to uniformity ot State permitting and registration forms and procedures, declares that the Secretary of Transportation "shall issue regulations implementing" the recommendations of the State and local working group established under paragraph (a) of this section. The working group has the obligation to consult with persons who may be subject to these forms and procedures, but has no public comment procedure. While the recommendations are those with which the Secretary must agree, this condition is not an adequate substitute for full public participation in notice-and-comment rulemaking. Thus, it would appear that the recommendations developed by the working group may become law without adequate opportunity for input from affected parties and the public at large.

Recommended solution: Amend Section 22(d) to clarity that the Secretary is obligated to initiate full rulemaking under Section 105 of the statute to consider the working group's recommendations under the notice-and-comment provisions of the Adniinistrative Procedure Act.

RECOMMENDED STATUTORY REVISIONS

Material in [brackets] would be deleted, and italicized material would be added—

I. Amend § 106(b)(3), pertaining to coordination of hazmat employee training, to read as follows—

(3) Coordination of [Emergency Response] *Employee* Training Regulations. In consultation with the Administrator and the Secretary of Labor, the Secretary shall take such actions as may be necessary to ensure that the training requirements established under this subsection [do not conflict with] *do not duplicate* the requirements *or the effort or expense of complying with* the regulations issued by the Occupational Safety and Health Administration of the Department of Labor relating *to hazard communication and* hazardous waste and emergency response contained in part 1910 of title 29 of the Code of Federal Regulations (band amendments thereto) [and], *or* the regulations issued by the Environmental Protection Agency relating to worKer protection standards for hazardous waste operations contained in part 311 of title 40 of such Code (and amendments thereto). For purposes of section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), no action taken by the Secretarv pursuant to this section shall be deemed to be an exercise of statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

II. Amend § 105(a)(3) as follows:

* * * who *tenders for transportation or* who transports *hazardous materials* [causes to be transported or shipped] * * *

Amend § 103(6)(A)(ii) to read:

* * * who [causes to be transported or shipped in commerce hazardous materials] *tenders hazardous materials for transportation* in commerce [hazardous materials] * * *

Amend § 106(c)(1) (A), (B), and (C), and paragraph (c)(3)(A) to read:

Tendering for transportation or transporting [or causing to be transported or shipped] in commerce * * *

Amend § 106(c)(4) to read:

Requirement.—No person required to file a registration statement by or under this subsection may *tender for transportation or* transport [or cause to be transported or shipped] hazardous materials * * *

Amend *106(d) (1) and (2) to read:* * * *tender for transportation or* transport [or cause to be transported] * * *

Amend §§ 106 (e) and (f), 107(a), 110(a), 116(d)(3), 120 and 121(a)(1) to read:

* * * *tenders for transportation or* transports [or causes to be transported or shipped] in commerce hazardous materials * * *

Amend § 117A(h)(2) (B) and (C) to read:

* * * hnazardous materials *tendered for transportation or* transported [or caused to be transported].

III. Amend § 106(c)(1) pertaining to registration to read:

* * * in accordance with the provisions of this subsection. *The Secretary shall have the discretion to limit the mandatory filing of registration statements to persons domiciled within the United States:*

IV. Amend § 104 to add the following closing sentence with respect to the Secretary's designation of hazardous materials:

In designating any quantity and form of material in commerce as a hazardous material solely because of its porential impact on the environment, the Secretarv shall rely exclusively upon the designations of much materials by the Administrator.

V. Amend § 112(c)(1) on preemption determinations to insert the following penultimate sentence:

The Secretary shall issue the requested administrative determination within 180 days of publication of the notice of having received the appiication, or the Secretary shall publish a statement in the Federal Register of the reason(s) why the administrative determination is delayed, with an estimate of the additional time necessary before the determination will be issued.

VI. Amend § 22(d) (§ 121(d) of HMTUSA), on uniformity of State registration and permitting, as follows:

(1) General rule—Subject to the provisions of this subsection *and the rule making provisions of Section 105(a) (2) including an opportunity for informal orai presentation,* the Secretary shall [issue] *initiate rule making to consider adoption of* regulations implementing those recommendations contained in the report submitted to the Secretary under subsection (c) with which the Secretary agrees.

LETTER FROM GEOFFREY OGDEN, DIRECTOR, MARITIME AND LAND TRANSPORT, DEPARTMENT OF STATE

JUNE 12, 1993.

JOSEPH S. NALEVANKO,
Department of Transportation,
Washington, DC 20590–0001

DEAR MR. NALEVANKO: Attached is a copy of a diplomatic note from the Royal Netherlands Embassy regarding docket number HM–208—Hazardous Materials Transportation; Registration and Fee Assessment Program. In the note, the Embassy is requesting a delay in the effective date of the Final Rule. The Netherlands Government needs more time to assess the rule and its implications on relevant international agreements. Moreover, the Netherlands Government does not believe that the filing deadline allows foreign carriers sufficient time to register, pay the fees and designate resident agents.

On behalf of the Department of State, T wish to support the Embassy's request. As you know, several foreign governments have expressed concerns. In the proposed rule of Octuber 1991, the Research and Special Programs Administration itself acknowledged that the program could prompt foreign countermeasures against U.S. carriers. The rule could also run counter to U.S. government positions in negotiations in the International Maritime Organization convention on hazardous and noxious substances. Although the Hazardous Materials Uniform Transportation Act mandated the program, these issues should be adequately addressed before it goes into effect.

ROYAL NETHERLANDS EMBASSY—VA/117506

The Royal Netherlands Embassy presents its compliments to the Department of State and has the honour to refer to the Department of Transportation Rule (49 CFR Parts 107 and 171) published in the Federal Register of 9 July 1992, concerning Hazardous Materials Transportation Registration and Fee Assessment Program.

The Netherlands Government, having taken note of the rule, wishes to make the following initial comments.

The Netherlands Government would like to inform the Department of State that because of the detailed and complex nature of the rule, considerably more time is needed to fully assess its administrative, economic and practical impact as well as the relationship of the rule with relevant international agreements. In this respect the Government of the Netherlands reserves the right to submit additional comments at the earliest possible occasion.

Furthermore and without prejudice to its final position as regards the rule, the Netherlands Government believes that the extremely short period between the date of publication of the rule and the required filing deadline of 31 August 1992, does not allow foreign carriers sufficient time for registration, payment of the fee and the designation of agents who are residents of the United States. The Government of

the Netherlands is specifically concerned that failure to comply with the filing deadline, for reasons beyond the control of Netherlands carriers, could result in serious and unwarranted consequences for those carriers.

The Royal Netherlands Embassy would be grateful to the Department of State if the above could be conveyed to the relevant United States authorities, in particular the Research and Special Programs Administration of the Department of Transportation and avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, DC, August 7, 1992.

LETTER FROM BRUCE E. CARTER, ACTING DIRECTOR, MARITIME AND LAND TRANSPORT, DEPARTMENT OF STATE

JANUARY 7, 1992.

HAZARDOUS MATERIALS SAFETY RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
Department of Transportation,
Washington, DC 20059–0001

LADIES AND GENTLEMEN: Attached is the original and four copies of note number 299 from the British Embassy, with the views of the British Government on docket number HM-2081 notice number 91-4. The British Embassy has asked the Department of State to convey the note to the Research and Special Programs Administration.

NOTE NO. 299

Her Britannic Majesty's Embassy presents its compliments to the Department of State and has the honour to refer to the Department of Transportation Notice of Proposed Rulemaking (NPRM) (No. HM-208, Notice No. 91-4), published in the Federal Register of 10 October 1991, concerning hazardous materials transportation registration and fee assessment program.

Her Majesty's Government has studied the NPRM and wishes to state its complete objection to the proposals in their present form.

General Principles

Her Majesty's Government understands it to be an established doctrine of United States law that any user fee should correspond to the value of the services received by the entity paying that fee. Guidelines issued in 1959 by the United States Office of Management and Budget stated that no charge should be made for services rendered "when the identification of the ultimate beneficiary is obscure and the service can be primarily considered as benefiting broadly the general public."

The NPRM in question appears significantly to depart from this principle insofar as it would set up a registration system for carriers and packagers of dangerous goods entering or being transported in the United States. Registration fees would be charged and revenue from them used to fund an emergency response training programme throughout the United States. Whereas this may be a praiseworthy objective in its own right, it will not provide any benefit to foreign carriers or packagers and accordingly fails to meet the criteria for the charging of fees referred to in the previous paragraph.

Unfair Competition

By unilaterally imposing a fee on foreign entities who will not benefit from the scheme to be so funded, the proposal is in effect imposing a discriminatory tax on non-United States concerns wishing to trade with the United States and in consequence erecting national trade barriers in a highly competitive international market. Her Majesty's Government also considers that a requirement for a foreign trader to be obliged to register with the government of another country as a precondition for trading with it conflicts with the general principles of the General Agreement on Tariffs and Trade, to which the United States is a signatory. Meeting all the legal requirements, including establishing a legal presence in the United States, will in practice also be prohibitively expensive for all but the largest firms.

Practice Questions

Whereas the proposal may help to fund emergency response services, it will do nothing to prevent incidents occurring, as there appears to be no requirement for professional competence on the part of a body seeking to register. Her Majesty's Government considers that registration has little value unless there is a precondition for such competence to be demonstrated.

It is also debatable whether handling the individual registration of every body transporting dangerous goods to the United States will be administratively possible, given the large number of companies likely to be affected. Her Majesty's Government suggests that companies that are members of recognised trade associations should be able to register through that association rather that direct with the United States authorities. Alternatively, the associations themselves could be registered on behalf of their bona fide members.

Exemptions From the Proposal

Her Majesty's Government notes that the United States Government and government agencies would be exempt from the provisions of the proposal. Given that these provisions would be of no benefit to nations other than the United States, Her Majesty's Government considers it appropriate for foreign governments and their agencies to enjoy the same exemption as that enjoyed by their United States counterparts, if unwarrantable discrimination is to be avoided.

Defence

In particular, Her Majesty's Government considers that an exemption should apply in the case of defence materials (such as weapons, ammunition, explosives and ancillaries) which, because of the normal requirements of the United States, are shipped to and transported within the United States of America only in conjuntion with United States defence agencies. It should be noted that in many European countries, including the United Kingdom, materials carred by or on behalf of allied military authorities are exempt from the normal regulations governing the transport of dangerous goods, and that this principle is contained in both domestic legislation and in international agreements.

Aviation

The proposed rules assume that no training schemes currently exist. This is not the case. Part 6 of the ICAO Technical Instructions for the Safe Transportation of Dangerous Goods by Air require all staff involved in the transport process to be properly trained.

The proposal to charge fees appear to conflict with the definition of permissible fees contained in the Air Services Agreement between the United Kingdom and the United States of America signed at Bermuda in July 1977 (the "Bermuda 2" Agreement), where Article 10 prohibits the United States from requiring foreign air carriers to fund programmes that do not relate directly to the provision of airport and air navigation facilities and services. It also appears that the proposal could be in breach of Article 15 of the 1944 Convention on International Civil Aviation (the "Chicago Convention") which prohibits the charging of fees solely for entry or transit.

Shipping

Her Majesty's Government believes that action of the type proposed now will also prejudice discussions currently being undertaken in the International Maritime Organisation's Legal Committee in respect of an international convention for a compensation regime in respect of hazardous and noxious substances.

Her Brittanic Majesty's Embassy would be grateful if the Department of State would convey to the Research and Special Programs Administration of the Department of Transportation the concern of Her Majesty's Government about the proposals in the Notice of Proposed Rulemaking HM-208.

The Embassy avails itself of this opportunity to renew the assurance of its highest consideration.

British Embassy, Washington, DC, 23 December 1991.

LETTER FROM L. GRAINGER

NOVEMBER 7, 1991.

Mr. A.I. ROBERTS,
Department of Transportation,
Washington, DC 20590

NOTICE OF PROPOSED RULEMAKING; HAZARDOUS MATERIALS TRANSPORTATION REGISTRATION & FEE ASSESSMENT PROGRAMME (HM-208)

DEAR MR ROBERTS: A copy of this NPRM has been forwarded to me by the commercial Department of the British Embassy in Washington. I note that comments are invited by 9 December, but I hope that we might discuss this with the US delegation in Geneva next month.

As I see it, it is proposed to establish a national registration programme for consignors and carriers of certain dangerous goods, as well as for manuf acturers of packagings for carrying such goods. The organizations to which the ruling would apply would have to file an annual registration statement with RSPA and pay an annual fee to fund a nationwide emergency response training and planning grant programme. A small additional fee would cover DOT processing costs. Initial statements would need to be filed by 31 May 1992 and, after 30 June 1992, any organization that had bailed to file would be precluded from carrying dangerous goods in the USA.

The rule would apply to foreign as well as domestic organizations involved in intrastate and interstate commerce. Furthermore, I am advised that it is planned that the rule should apply to any carrier which brings the specified dangerous goods into the US regardless of whether or not that carrier is responsible for onward carriage from the port of arrival. Paragraph B on p. 51296 invites comments on how the rule would apply to foreign entities. We note that US Government agencies are exempt but that foreign governments are not. Thus, as drafted, any UK Department moving dangerous goods in the US (eg the Ministry of Defence) would need to register and pay a fee. The middle column of p. 51297 considers assessment of the annual fee for domestic and foreign activities. For foreign entities a fee based on activities would seem to be more reasonable than one based on income.

We shall want to consider this with our airlines and shipping companies engaged in intermodal activities, as well as with exporters. The concern is whether UK industry will be unfairly treated or disadvantaged under this ruling in comparison with their US counterparts, and, if so, the form of any representations we might make on the matter. I assume that the maritime implications of this matter will be reviewed by the International Chamber of Shipping and I propose to ask Mr Squires for views.

Bearing in mind obligations under GATT etc etc, we shall want to look closely at the likely effects of these proposals. In the meantime, it would be very helpful to receive some reassurance that the foreigner is not to be unfairly treated in the erection of new barriers to trade and that would-be importers may reasonably be expected to be able to know what is involved when the system is installed. If any supplementary explanatory material is available, I should be grateful if copies could be provided to our Embassy, Mr DL McMillan—First Secretary (Transport).

Yours sincerely,

L. GRAINGER.

CEFIC TELEFAX TO DEPARTMENT OF TRANSPORTATION

CEFIC, the European Chemical Industry Council, welcomes the consultation organised by the US Department of Transportation and wishes to provide the following comments:

CEFIC has noted with some concern the proposed registration fee imposed on certain hazardous material shippers, carriers and packaging manufacturers. Such concern raises both from principle reasons and practical considerations.

CEFIC shares the objectives of better emergency response training and planning prograrne and supports the efforts made in tb1s area by Public International Organisations, National Governments, Industrial Associations and their Member Companies.

However, these efforts should be made as much as possible with a strict cost/benefit analysis and in consideration to their impact on international trade.

Clearly imported goods and international carriage to the US will be most affected by the proposed change and there is a real danger that other countries might be tempted to foUow the example given by unilateral action of tne US. This might generate new trade barriers and therefore negatively affect international trade.

Important programs developed by several chemical companies and other entities which have also set up emergency response should be duly recognised.

Finally, it is feared that the whole administration process and fee collection schedule (registration, calculation of the fee, etc.) will inevitably generate bureaucracy, burdensome recordkeeping and counterproductive costs.

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DEPARTMENT OF STATE
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USDOC FOR 4713/ILP/EUR/OWF:ANN CORRO

E.O. 12356: N/A
TAGS: EWWT, IMO, GR
SUBJECT: GREEK QUESTION ON US PROPOSED RULEMAKING

1. THIS IS AN ACTION MESSAGE - SEE PARAGRAPH 5.

2. ON THURSDAY, FEBRUARY 13TH, RADM NICKOLAOS HASSIOTIS OF THE HELLENIC COAST GUARD REQUESTED CLARIFICATION ON A US DEPARTMENT OF TRANSPORTATION PROPOSED RULEMAKING. THE PROPOSAL WAS PUBLISHED IN THE FEDERAL REGISTER ON OCTOBER 18TH, 19 CFR PARTS 101 AND 171, DOCKET NUMBER HM-208, NOTICE NUMBER 91-4, CONCERNING TRANSPORTATION OF HAZARDOUS MATERIALS.

3. HASSIOTIS SAID THE GREEK GOVERNMENT DID NOT UNDERSTAND IF THE PROVISIONS OF THE PROPOSED RULEMAKING (REGISTRATION AND PAYMENT OF FEES) WERE TO APPLY TO VESSELS IN INTERNATIONAL TRANSPORT. IF SO, HE SAID, GREECE HAD THREE CONCERNS:

--THE SYSTEM SEEMED UNILATERAL AND MIGHT SPUR OTHER COUNTRIES TO UNILATERALLY INTRODUCE SIMILAR MEASURES.

- THE LEGAL COMMITTEE OF THE IMO IS CONSIDERING AN INTERNATIONAL CONVENTION ON THE TRANSPORT OF HAZARDOUS MATERIALS, AND A US ACTION MIGHT PREEMPT OR PREJUDICE THAT PROCESS.

--THERE IS NO GOOD REASON WHY FOREIGN CARRIERS ENGAGED IN INTERNATIONAL TRANSPORTATION SHOULD PAY FOR A US EMERGENCY PLANNING AND GRANT PROGRAM.

4. HASSIOTIS ASKED THAT WE CLARIFY FOR HIM THE APPLICABILITY OF THE PROPOSED NEW RULE.

5. ACTION REQUESTED: PLEASE PROVIDE EMBASSY WITH GUIDANCE WHICH WE CAN SHARE WITH THE GREEK GOVERNMENT

ASAP.

SOTIRHOS

	Act	Info
Director		
Dep. Director		

DEPARTMENT OF STATE TELEFAX TO HELLENIC COAST GUARD

1. *Summary:* This cable contains information about a proposed rulemaking on transportation of hazardous materials for response to inquiry from Hellenic Coast Guard. The proposed rulemaking applies to foreign carriers in trades to or from U.S. ports. Department is advising proper authorities of Greek concerns. End summary.

2. Under the proposed rulemaking which Admiral Hassiotis raised with Embassy reftel, shippers and carriers of certain hazardous materials and certain manufacturers of hazardous material packaging would have to file a registration statement with the Department of Transportation and pay an annual fee of not less than 250 USD or more than 5,000 USD. The fees would fund a national emergency response

training and planning grant program. The registration would include the registrant's name and principal place of business, a description of the registrant's activities subject to the requirements, and the state or states where the registrant would carry out these activities. The requirements are set out in a law passed in 1990 which amends the Hazardous Materials Transportation Act. Department is pouching a copy of the notice of proposed rulemaking to the Embassy.

3. Embassy may advise Hassiotis that the rule would apply to vessels in international transport to or from U.S. ports. The law applies to any person who transports or causes to be shipped hazardous materials quote within the jurisdiction of the United States between a place in a State and any place outside of such state end quote, or in commerce quote which affects trade, traffic commerce, or transportation between a State and any place outside of such state. End quote. According to the proposed rulemaking, foreign shippers, carriers and governments are specifically included among those persons that would be subject to the regulations. The law only exempts Federal, state and local governments of the United States. Persons not resident of the U.S. would have to designate a resident agent for service of process. The agent would file the registration statement and pay the fees on behalf of the non-resident.

4. Department is advising Department of Transportation of the Greek concerns. The proposed rulemaking in fact expresses concern about the possibility of reciprocal treatment of U.S. businesses abroad and asks for comments on this issue. If Hassiotis has any further comments on the proposed rule, department would be happy to transmit them to the proper officials. Embassy should be aware, however, that the deadline for comments was December 9, 1991.

5. Department is also advising U.S. Coast Guard officials taking part in negotiations on the IMO Hazardous and Noxious Substances Convention about the proposed rulemaking.

Prepared Statement of Sonoco Products Co.

INTRODUCTION

Sonoco Products Company appreciates the opportunity to submit written testimony to the Senate Committee on Commerce, Science, and Transportation's Subcommittee on Surface Transportation and to explain how the Department of Transportation's ("DOT") Research and Special Programs Administration's ("RSPA") new rule—"HN-181"—will affect Sonoco Products Company and the entire domestic fibre drum industry. In short, RSPA's actions, in promulgating HM-181 and in failing to grant an exemption under Section 107 of the Hazardous Materials Transportation Act ("HMTA") will eliminate the use of a safety-proven, environmentally responsible and cost-effective package for the domestic transport of certain hazardous materials, manufactured with a unique American technology, and will severely damage the domestic industry. Sonoco is concerned about RSPA's adoption of HM-181 which incorporates untested and unproven standards and the Agency's decision to eliminate a safe and proven packaging that has been successfully used in this country for 30 years to ship certain hazardous materials in more than 20 million drums.

BACKGROUND

In a November 1987 proposed rule, RSPA comprehensively revised the existing hazardous materials regulations with respect to hazardous materials communications, classification and packaging requirements. RSPA's proposed rule—HM-181—was based upon the United Nations Recommendations On The Transport Of Dangerous Goods ("UN Recommendations") and RSPA's own initiative. Because HM-181 completely revises the existing regulations that have been in place for more than 50 years, it is not fully effective until October 1, 1996. Part of RSPA's stated reasoning for promulgating HM-181 was to "enhance safety through better classification in packaging". In brief, HM-181 completely revised the existing regulations for packaging which were based upon design specifications by adopting the performance-oriented packaging standards set forth in the UN Recommendations. in promulgating the proposed rule, RSPA stated its belief that the shift to a performance-based packaging system would reduce the need for exemptions which Congress specifically authorized DOT to issue under Section 107 of the HMTA.

In response to HM-181 as proposed, the fibre drum industry (including Sonoco) submitted comments to RSPA urging that certain changes be made to the regulations to allow the continued use of open-head fibre drums—a packaging used by many different industries in the United States and one that has proven to be extremely safe and reliable (fibre drums have a 99.99 percent plus safety record). Be-

cause RSPA only incorporated part of the fibre drum industry's requested revisions to proposed HM-181 in the 1990 final rule and the December 1991 corrections document, the fibre drum industry (as represented by the Fibre Drum Technical Council) submitted a Section 107 exemption application to RSPA in June 1992 that would authorize use of these drums (mostly for certain flammable and corrosive liquids) in domestic commerce only.

In this regard, it is important to note here that RSPA did authorize numerous exceptions to the 1990 final rule for various industries and companies that submitted comments in response to the proposed rule. A review of these authorized exceptions in the 1990 final rule, and the December 1991 corrections document, demonstrates that RSPA granted these exceptions based upon the following factors: the impact of HM-181 upon domestic markets, the cost of compliance to the industry or company requesting the exceptions, and data provided by commentors as to the existing domestic transportation practices and the relevant safety of such practices. By way of example, RSPA decided to classify anhydrous ammonia as a "non-flammable gas" for purposes of domestic shipments notwithstanding the fact that anhydrous ammonia is classified as a "poison gas" under HM-181 for international shipments. RSPA also agreed to allow salvage drums to be tested at a different performance level than that required by the international standards based upon the existing manner in which the drums are used. Finally, RSPA also allowed the steel drum industry to continue to use the T-zone test as a performance-based standard notwithstanding the fact that its use is questionable as an acceptable "leakproofness" test under the international standards. As noted aove, in granting these exceptions and others, RSPA relied primarily upon existing safety data, shipping experience, and costs of compliance.

Although the domestic fibre drum industry provided data to RSPA as to the outstanding safety record of fibre drums and the excellent shipping experience associated with use of these drums by various domestic industries, RSPA authorized only very limited exceptions in the final rules to allow for their continued use (effectively eliminating the use of open-head fibre drums by customers for certain liquids). Accordingly, the fibre drum industry (through the auspices of the Fibre Drum Technical Council) submitted the exemption application to RSPA. The exemption application set forth various performance standards that open-head fibre drums would be required to pass for authorization—tests which have been used over the years by the industry, and as the safety record demonstrates, accurately predict the safety of these drums. Nevertheless, an exemption application was initially denied by RSPA in January 1993 on the grounds that the drums cannot meet the HM-181 performance standards (drop and pressurization tests) required by the new rules. (RSPA subsequently decided on June 1, 1993 to reconsider the exemption application and has vacated the initial decision to deny.)

In discussing RSPA's failure to provide the needed exceptions in the final rule or an exemption for the continued use of fibre drums, it is important to know that open-head fibre drums have been in use under the existing regulations and the technology has been evolving since the early 1970's. In fact, fibre drums authorized under the existing pre-HM-181 regulations are in use today. In 1972, when RSPA's regulations were expanded to cover several corrosive materials which were transported in fibre drums but which were unregulated at that time, RSPA proposed regulations that would have removed the authorization for fibre drums. At that time, the fibre drum industry presented its excellent safety record to the Agency and RSPA announced in the Federal Register that there was no indication that a safety problem existed with open-head fibre drums and that it would continue authorization for these fibre drums. Over 20 years later, without finding of a safety issued RSPA has now effectively eliminated the use of open-head fibre drums in issuing HM-181 without granting a statutorily authorized exemption to the fibre drum industry for domestic use. Its primary explanation has been that these drums do not fit within the new international system.

It is important that Congress understand that HM-181 is based upon an artificially and theoretically established benchmark evaluation system that ignores decades of proven safe experience in the transportation of chemicals. These new standards are not "in-use". experienced-based standards but are rather, theoretical benchmarks used to evaluate the suitability of packaging by the government. At no time has any study or evidence been presented by the international standards coordinators or DOT that shows a correlation between actual experience and the projected success of the packaging under the new theoretical test criteria set forth in HM-181. In short, while open-head fibre drums in use today do not meet two of the performance tests (which remain unproven) more than 20 years of shipping experience demonstrates that the package is safe (protection of the public and the environment), reliable (desirable by its characteristics as a substitute for other competitive

packaging), and performance-proven (by RSPA's own incident reporting data covering a 12-year period). In fact, this fibre drum's incident rate is lower than other approved competitive packaging.

INTERNATIONAL STANDARDS

In RSPA's 1990 final rule and the 1991 corrections document, RSPA stated that one of its reasons for adopting HM-181 was to ensure that domestic transportation standards would not be a barrier to international trade, and that this policy was consistent with the 1990 amendments to the HMTA and the Trade Agreements Act of 1979. As Congress knows, Section 105(e) of the 1990 amendments authorized the Secretary of DOT to participate in international forums and directed the Secretary of DOT to recommend standards and requirements for the transport of hazardous materials in international commerce. But Congress did not require DOT to issue standards identical to those adopted by an international body if the Secretary determined that the standards were unnecessary or unsafe. Likewise, the Trade Agreements Act of 1979 requires federal agencies to develop standards based upon international standards only if appropriate; however, the Act also requires federal agencies to consider legitimate domestic objectives when necessary in adopting federal standards.

Although RSPA has an obligation to consider international standards in revising the federal hazardous materials regulations, RSPA was not mandated to adopt identical standards, and moreover, existing law authorized RSPA to consider domestic objectives and concerns as well—such as the impact that HM-181 will have and has had on the domestic fibre drum industry. Contrary to RSPA's stated rationale for the adoption of HM-181—Congress did not require RSPA to adopt international standards if they are unnecessary or unsafe.

In this regard, Congress should note the fact that the UN Recommendations, after which HM-181 is modeled, are not completely uniform nor do they impose an absolute mandate. Nor have the standards been in use for more than a few years; there is, in fact, no long-term experience with these standards by any country. In fact, the UN Recommendations were never intended to preclude domestic authorities (such as the U.S. DOT) from granting exceptions. Specifically, Paragraph 9.1.8 (as set forth below) of Chapter 9 of the UN Recommendations was adopted by the UN in response to participating countries' concerns that certain types of packaging would be eliminated since they did not meet the Chapter 9 performance tests which have no long-term experience record (for example, the Europeans wanted an exception for use of tin plate and light-metal receptacles). In response to these countries' concerns, the UN adopted Paragraph 9.1.8 to recognize that different regions and countries may wish to adopt exceptions to the UN Recommendations for substances or packages based upon individual (domestic) modes of transportation.

> It is recognized that certain substances * * * are transported in packagings which do not meet all the performance tests in this Chapter. It may be appropriate for provisions to be made for such substances and/or packagings in relation to individual modes of transport on a regional basis.

The United States specifically supported and encouraged adoption of Paragraph 9.1.8 to recognize regional trends and practices associated with the transportation of hazardous materials. Yet, RSPA did not consider this provision in evaluating the fibre drum industry's exemption application. In contrast, Canada (a country that subscribes to the UN Recommendations) relied upon Paragraph 9.1.8 in deciding to authorize the continued domestic use of all of its former packaging (including fibre drums) noting that there is no evidence that there was a safety problem but that there was evidence that adherence solely to the UN Recommendations could harm Canadian industry by unnecessarily removing packaging from the marketplace that did not have a safety problem. In this regard, Canada stated in its counterpart to our Federal Register:

> Allowing only UN performance-oriented packaging would also reject the wealth of accumulated experience reflected in existing packagings, both those found in the Red Book [Canada's counterpart for rail to DOT hazardous materials regulations] and those developed over the years by individual companies.

As distinguished from Canada, RSPA has decided not to authorize the continued use or open-head fibre drums, stating in the 1991 corrections document "that single fibre drums have not been viewed internationally as suitable for transporting liquid hazardous materials because of the high-water absorption properties of fibre packaging materials". RSPA's reasoning disregards a very critical fact: the domestic fibre drum industry uses a technology for the packaging of liquids that has been uniquely developed in the United States and which has been successfully and safely used in this country for the past 30 years by the chemical industry. This domestic tech-

nology has not been used by other countries only because they decided not to pay the costs associated with acquiring this American technology. American manufacturing capabilities and raw materials are costly to duplicate elsewhere, and therefore, there has been little interest in licensing this advanced technology by other countries because of economics.

OUTSTANDING SAFETY RECORD OF FIBRE DRUM INDUSTRY

When RSPA initially denied the domestic fibre drum industry's exemption application, it stated that the exemption request failed to "demonstrate that the fibre drums proposed for use in the shipment of various hazardous materials [would] provide a level of safety at least equal to that established in the regulations adopted under HM-181." The level of safety to which RSPA refers is the new performance standards required by HM-181. As explained, RSPA's conclusion ignores important considerations such as the fibre drum industry's 30 years of shipping experience and the outstanding safety record (99.99 percent safe) associated with currently authorized fibre drums. This safety record is based upon company records and RSPA's own records (Hazardous materials Incident Reporting System) which shows that from 1980 to 1991, over 13 million fibre drums were built for use in shipping liquid hazardous materials for which the exemption was requested. With respect to the 13 million drums, only 455 incident reports indicating a failure of some type were filed with RSPA during this 12-year period. Thus, the success rate that can be attributed to shipments of hazardous materials in fibre drums is virtually 100 percent which is equivalent to or better than the success rate of competitive packaging.

The domestic fibre drum industry's request to DOT to authorize an exception and/or an exemption to HM-181 for continued authorization of open-head fibre drums after October 1, 1996, was based upon the 30 years shipping experience plus the outstanding safety record discussed above. in contrast, there is no history of shipping experience in this country, or internationally, associated with the new HM-181 performance standards. These new performance standards have not been tested nor proven in the real-life transportation world—there is an obvious lack of experience with these standards and they do not, and cannot, in any regulatory context, represent an established existing level of safety.

Even RSPA has acknowledged the satisfactory safety record associated with fibre drums that are currently authorized (pre-HM-181 authorized drums). For example, in denying the industry's exemption application, RSPA did not base its decision upon the existing safety record nor cite safety as a factor for the denial. Additionally, RSPA explained in the 1990 final rule that certain standards required by HM-181 would not become effective for a five-year period unless safety considerations warranted a shorter implementation period. Since the new performance standards prescribed for fibre drums do not become effective until October 1, 1996, RSPA conceded that there are no safety-related reasons to support an early phase-out of currently authorized fibre drums.

Finally, it is important that Congress heed RSPA's public acknowledgment that the new performance standards only simulate the transportation environment—that the new standards are not based upon a knowledge of how packaging meeting the standards will perform in the real-world transportation environment. Notwithstanding the Agency's statutory obligation to ensure safety in the transportation of hazardous materials in the real world, RSPA has concurrently decided to ignore the excellent safety record of the fibre drum industry which is based upon actual shipping experience and use in the real-world transportation environment. Given RSPA's inconsistent behavior, Congress must seriously consider the fact that the new performance-based system set forth in HM-181 is being introduced nationwide by RSPA without any evaluation or assessment to determine its feasibility and adequacy. Packaging manufacturers are not required to change over to the new system before October 1, 1994, and consequently they are still manufacturing the old packaging. As of October 1, 1996 we will have a completely new packaging system which many persons, as the public comments to HM-181 illustrate, know is yet unproven and more expensive.

The safety of the open-head fibre drum, and the excellent shipping experience associated with its use, is further attested to by the numerous customers of the fibre drum industry which submitted comments to RSPA documenting the excellent shipping experience that these companies have had with the transportation of materials in fibre drums. These companies include Olin Corporation, Chevron Chemical Company, Shell Oil Company, Borden Inc., OTV Distributors, Inc., USC (division of Hydrate Chemical, Co.), Golden West Distribution & Warehousing, WCS Corporation, Cameron-Yakima, Inc., J.F. Shelton, Econotek, Inc., Jonco Chemical Co., Inc., Ally Industries, Independent Packaging Inc., Sybron Chemicals Inc., The Virkler Com-

pany, Cooper Chemical Company, Specialty Polymers, Inc., and General Chemical Corp., and Neste (formerly, Co-Plas, Inc.) (many of which are Fortune 500 companies). These companies urged RSPA to reconsider its decision to disallow continued use of open-head fibre drums for the shipment of currently authorized hazardous materials based upon their proven performance in service.

THE IMPACT OF RSPA'S DECISION ON DOMESTIC MARKETS AND COMPETITION

Subsequent to the time that RSPA proposed HM-181, the fibre drum industry contacted the Agency, by way of comments and petitions for reconsideration, to stress the fact that fibre drums have been successfully shipped during the 30 plus years without any safety problems. As noted, RSPA did not cite a safety difficulty or anticipated new risks associated with .the use of fibre drums. RSPA based its position upon the cancellation of the packaging on the alleged upgrading of "package integrity" and consistency with international standards. RSPA did not (and cannot) offer any supporting data to show there was a deficiency with the currently authorized (pre-HM-181) domestic fibre drum packaging. Moreover, RSPA cannot offer any data to show that the new international standards provide safer packaging.

In this context, Congress should know that the international standards, which will become the new rules effective in 1996, were developed mainly by European governments (members of the UN Committee responsible include a majority of such governments). Europe has never used the fibre drum technology at issue here for packaging of liquids and instead has largely relied upon steel drums. Europeans, upon being confronted several years ago with the American fibre-based technology, rejected it as too costly in their society. In the packaging industry, paper costs compared to steel are much higher in Europe than in the United States. As a result, a natural market situation has evolved whereby the American industry relied heavily on paper as an important, competitive, cost-effective, and equally viable packaging alternative for its chemical products. The American fibre drum industry developed and grew in this free, open, and competitive marketplace.

Given the lack of interest shown by other countries to this unique American technology, and in adopting international standards that knowingly ignore this technology, the "new international system" as adopted by RSPA is obviously cutting short successful American economic development. RSPA's decision will deny American industry technical advantages in production that are available by choice in the United States but are not available by choice in other parts of the world. in addition, the elimination of these fibre drums will cost American industry millions of dollars by requiring customers of these fibre drums to use more expensive, alternative drums and in resulting plant consolidations and closings that will occur throughout the domestic fibre drum industry.

In recognition that these new technology drums are not manufactured in Europe, Congress should further note that the American fibre drum industry is not asking that its containers be recognized in Europe. Rather, it is willing to let the marketplace decide that issue. In recognition of RSPA's concerns with international uniformity, the industry proposed a specific restriction in its June 1992 exemption application that should have been acceptable to RSPA given the safety record of fibre drums—it proposed to limit the shipment of materials in fibre drums to domestic markets. Specifically, the fibre drum industry is only asking RSPA and Congress to compete in the United States given the excellent experience record in shipping hazardous materials and given RSPA's lack of data and information to demonstrate otherwise. Recognition of a proven technology during more than 30 years of satisfactory experience should not be rejected without serious careful consideration of the facts.

In sum, RSPA's actions in adopting the international standards and in failing to grant the domestic fibre drum industry's exemption for continued authorization will result in serious harm to an American industry without any benefits. RSPA's reason for this action seems inexplicable especially if it is solely for the purpose of uniformity. By itself, uniformity is not a reason to close plants, lay off people, and cause business hardship to the many companies that use and manufacture fibre drums.

ENVIRONMENTAL REASONS THAT SUPPORT CONTINUED DOMESTIC USE OF THE FIBRE DRUM

In addition to the excellent safety record and shipping experience of the fibre drum industry, and the significant economic impact that HM-181 would have upon the domestic economy, another compelling reason that supports continued domestic use of the fibre drum is the fact that these drums are more environmentally responsible than other types of packaging. First of all, paper—the major component of fibre drums—is a renewable resource. Furthermore, fibre drums have become the pre-

ferred option for many customers who formerly used metal and plastic drums. Additionally, paper from fibre drums is being recycled. In fact, Sonoco (which is the largest manufacturer of fibre drums in the United States and a major recycler) has developed a complete recycling system (with four mobile and two stationary units in place and more planned) in which empty drums are collected and metal components are separated from fibre. Fibre elements are then shredded for use in manufacturing industrial grade fiberboard. Two additional fibre drum manufacturers are also developing similar recycling capacity. As Congress knows, the paper industry is the largest recycler among industries in the United States. Domestic use of the fibre drum is also consistent with EPA's primary goal in the management of hazardous waste which is to eliminate the generation of such wastes by promoting all recycling efforts since recycling more effectively reduces risks to humans and the environment, conserves energy and slows the depletion of nonrenewable natural resources.

LEGISLATION

Legislation has been drafted by Sonoco Products Company to prevent serious damage to the fibre drum industry—a unique American technology which will suffer significant effects if RSPA is allowed to implement HM-181 as is, or without the issuance of a Section 107 exemption to the fibre drum industry for domestic commerce only. By way of example, the impact upon Sonoco will be at least a $15 million dollar loss as the specific impact upon some of our facilities range from 10 percent up to 33 percent. Plants will be consolidated and employees will be laid off.

In an effort to inject objectivity into RSPA's rulemaking process and to ensure safety in transportation, the proposed legislation allows the continued use of fibre drums provided they meet certain standards that have been demonstrated (through experience) to be a reliable predictor of safety. Sonoco seeks the support of this Subcommittee and the full Committee on Commerce, Science and Transportation in advancing this legislation which is absolutely necessary if the American fibre drum industry is not to be severely impacted.

PREPARED STATEMENT OF THE COMPRESSED GAS ASSOCIATION

The Compressed Gas Association (CGA), founded in 1913, represents over two hundred member companies worldwide in the development and promotion of safety standards and safety practices in the industrial gas industry. The Association represents all facets of the industry—manufacturers, distributors, equipment suppliers, and transporters. Through the committee system CGA creates technical specifications, safety standards, training and educational materials; and also works with government agencies to formulate responsible regulations and standards and to promote compliance with these regulations and standards.

CGA member firms produce, market, and distribute industrial gases and cryogenic liquids such as carbon dioxide, ethylene, hydrogen, helium, nitrogen, oxygen, and various specialty gases. These gases are delivered by rail cars and pipelines as well as common, contract, and private motor carriers.

The Compressed Gas Association recognizes that the Hazardous Materials Transportation Uniform Safety Act, enacted less than three years ago, is new. Many of the regulations required under the Act are in development or have only recently been implemented. We believe that the Act so far has lead to increased safety in the transportation of hazardous materials and requires no major change at this time. However CGA does have the following concerns:

Registration: CGA member firms operate in world markets. We are concerned that the current provisions requiring registration of foreign shippers exporting to the United States may result in similar requirements placed on U.S. firms that export. The Research and Special Programs Administration at D.O.T. has instituted an efficient registration process; however there is no guarantee that the registration programs imposed by other nations could result in barriers to U.S. exports. The Compressed Gas Association recommends that the provision requiring registration of foreign shippers be eliminated. As we believe that there is little enhancement of the public safety and much commercial risk.

Centralized Tracking of Hazardous Materials Shipments: CGA joined with other trade associations in opposition to the "Central Tracking Proposal" during the process that lead to passage of HMTUSA in 1990. We support the findings of the National Academy of Sciences' Transportation Research Board in recommending against implementing a "stand alone" tracking system. We note that the study found that information was lacking or inaccurate in 200 incidents of consequence per year and that no lives were lost as a result of missing or inaccurate information at the incident scene. These 200 incidents, when compared to the over 110,000,000

hazardous materials shipments in annual commerce, do not justify the implementation of a multi billion centralized tracking system. The Association participated in D.O.T. docket HM-206, Improvements to the Hazardous Materials Identification System, and will work with the Department to develop solutions to the six informational deficiencies noted in the NAS-TRB study.

State/Local Hazardous Materials Fees: CGA member firms operate trucks throughout the fifty states serving large and small businesses in metropolitan and rural areas. This operations factor may subject our members to numerous fees imposed by the various governmental jurisdictions. In the process leading to passage of HMTUSA, the Association opposed any local fees in view of the Federal registration program which was intended to fund local emergency response training.

However, Section 22, of the 1990 Act, permits state/local fees. CGA participated on the joint industry and government task force that addressed the guidelines for state/local fee programs. We urge Congress to establish a deadline for implementation of a base state program similar to that of the International Registration Program required by the Intermodal Surface Transportation Efficiency Act of 1990. The transportation industry has gained much efficiency under the base state concept for truck registration and fuel programs. These similar efficiencies must be part of any state/local hazardous materials fee program. We would also note that our member firms have hazardous materials emergency response training programs which are offered at no charge to local emergency responders.

State/local fees must be reasonable and utilized for actual training and equipment of local responders. Fees must not be considered as another source of revenue for the municipal treasury. Further, Congress should disallow Federal funds to any governing body that imposes it's own fee.

Uniformity: This word forms part of the title of the 1990 Act; any reauthorization must continue to place strong emphasis on "uniformity". The issue of global competitiveness requires uniformity among federal, state, and local standards. More importantly, regulatory training of carrier and shipper personnel and safety/response training for these personnel and in particular, local emergency responders, can be compromised through conflicting regulatory standards.

The federal government must continue to play a strong role in the preemption of state/local regulations. The Federal Highway Administration has taken over the role of the Research and Special Programs Administration in the area of highway routing controversies. RSPA has issued numerous inconsistency rulings. It is imperative that FHWA rulings and interpretations be consistent with past RSPA rulings.

Conclusion: The Compressed Gas Association supports the reauthorization of the Hazardous Materials Transportation Uniform Safety Act and asks that the Congress consider the views of the Association during the legislative process.

LETTER FROM STEPHEN C. HANSEN, CHAIRMAN, CHEMICAL WASTE TRANSPORTATION INSTITUTE

JULY 9, 1993.

The Honorable J. JAMES EXON,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR EXON: On behalf of the Chemical Waste Transportation Institute (CWTI), I am requesting that this letter be included in the official record of the Subcommittee on Surface Transportation's July 21, 993 hearing on the reauthorization of the Hazardous Materials Transportation Act (HMTA).

The CWTI is part of the National Solid Wastes Management Association, a not-for-profit association that represents waste services companies throughout the United States and Canada. Members of the Institute are commercial firms specializing in the transportation of hazardous waste, by truck and rail, from its point of generation to its management destination. Our members transport over 50 percent of all commercially managed hazardous waste.

At the July 21st hearing, oral testimony will be presented by representatives of the trucking and rail industries. However, we believe our views on current hazardous materials transportation issues are sufficiently unique to deserve separate consideration by the Subcommittee. In particular, we wish to focus the Subcommittee's attention to the lack of compliance by non-federal entities with the requirements of section 13(b) of the Hazardous Materials Transportation Act Uniform Safety Act (HMTUSA). Section 13(b) prohibits states, political subdivisions and Indian tribes from levying any fee in connection with the transportation of hazardous materials that is not equitable and not used for purposes related to the transportation of hazardous materials.

Prior to enactment of the HMTUSA, the CWTI was aware of about 30 states that imposed fees on the transportation of hazardous waste. Only one of these fee schemes provided an option for interstate carriers to apportion those fees. Unapportioned fees have a chilling effect on interstate commerce and thus are violative of the Commerce Clause. Courts have overturned such fees in the past—the landmark case being *ATA* v. *Scheiner,* 107 S. Ct. 2829, 2833-36 (1987). Fee apportionment is a fundamental test of equity for interstate carriers. Recently, the Superior Court of New Hampshire found that the Court cannot conceive of a situation where it can rule that fees discriminate or unduly burden interstate commerce and yet are *equitable.* (Emphasis added.) (*ATA* v. *State of New Hampshire, No. 92-E-604, Superior Court, Merrimack Co., April 19, 1993.)*

Since enactment, non-federal entities have not revised their fee schemes short of court challenge. Indeed, new unapportioned fees have been implemented at both the state and local level. None of the new fees provide for fee apportionment. To illustrate the breadth of this "equity" concern, I am enclosing a chart summarizing the new state fees requirements and a copy of the Institute's latest biennial state hazardous waste fee survey. The chart shows that states have not been deterred by Section 13(b) from imposing unapportioned fees. The survey shows that a motor carrier determined to transport hazardous waste in the 29 states that imposed unapportioned fees on the transportation of hazardous waste as of December 1992 would have to pay up front $10,547 to operate one truck. If the same carrier determined to operate the same truck for the same period of time in intrastate commerce only, the most the carrier would pay up front would be $1.800.

Additionally, the fee survey shows the uses to which states claim to put their fees. These uses vary from administration and enforcement expenses, to general fund revenues and revenue to fund environmental remediation activities. Only two states specifically said the fees were used for transportation or transportation-related expenses. Of particular concern in gathering information from the states for this survey was the reluctance of a couple of states to provide information concerning their fees. We believe this reluctance stems in part from state concern about industry access and use of the information in light of the preemptive language contained in Section 13(b).

To address these concerns, the CWTI makes three recommendations:

First, we do not believe that Congress should have given localities equal standing with states to assess fees. While we believe localities should benefit from fee schemes imposed at the state level through pass-through requirements, localities are simply not in a position to foster regionalized approaches to funding emergency response planning and training needs, nor are they inclined to consider regional efficiencies as long as they have independent financing authority. Localities should be precluded from directly assessing fees on the regulated community. Localities should apply to states for resources to finance hazardous materials planning and training needs.

Second, we believe states should have authority to assess fees to finance hazardous materials transportation related purposes. The federal government depends on states to enforce federal requirements. Yet, the federal government is not prepared to finance such enforcement. The training and planning grants provided states through the HMTA requires a 20 percent state batch. States cannot be precluded from raising funds to advantage themselves of such grant programs. In fact, when the state uniform and reciprocal hazardous materials registration and permitting programs authorized by Section 21 of HMTUSA are operational, we believe these state programs should stand in lieu of the federal registration and permitting programs.

Third, we would ask Congress to provide a better means to compel tates that choose to assess fees to do so consistent with the requirements of Section 13(b). Currently, the statute precludes recourse by affected parties to the administrative remedy provided for other preemption issues. (See Section 13(c).) Thus, affected parties are left to seek Section 13(b) compliance by states solely through the courts. The costs of litigation, however, effectively preclude affected parties from pursuing any timely or meaningful enforcement of the "equitable" and "use for" tests. States are not even required to disclose the amounts collected and the uses to which those fees have been put so that affected parties can even assess compliance. At a minimum, we could ask Congress to require annual disclosure by states of the amount of the fees they collect and the uses to which the fees have been put, and to allow affected parties to petition for preemption of fees which fail the "equity" and "used for" tests through the determination of preemption process.

CONCLUSION

We appreciate the opportunity to snare our views and suggestions to remedy concerns we have with the I mplementation of Section 13(b). While we have other technical concerns with regard to the implementation of the HMTUSA, we believe these concerns can be worked out with staff. As legislation progresses to extend the HMTA, please let me, or Cynthia Hilton, Manager, CWTI, know if we can provide more information to facilitate your efforts in this regard.

Sincerely,

STEPHEN C. HANSEN,
Chairman.

Summary of State Statutes Imposing New Fees on the Interstate Transportation of Hazardous Materials Since Enactment of the Hazardous Materials Transportation Uniform Safety Act[1]

State	Fee basis	Covered material	Status
AZ	100m[2]c[3]25v[4]	Hazardous waste	Repealed[5].
	125t[6]	Hazardous material	Repealed[7].
CA	279mc	Hazmat placarded/manifested	Eff. 12/31/92.
	500r[9]c	Hazmat placarded/manifested	Eff. 12/31/92.
CO	50mrc	Hazardous waste	Eff. 8/1/92.
NJ	3r	Placarded freight car loaded/unloaded in state	Eff. 5/28/93.
WI[10]	400/2000c	Per Fed. registration hazmat activity	Eff. 7/1/93.

[1] P.L. 101–615 (November 17, 1990).
[2] "m"="motor carrier."
[3] "c"="per company."
[4] "v"="per vehicle."
[5] Repealed pursuant to the filing of litigation National Tank Truck Carriers, Inc. & Rogers Cartage Company v. Charles E. Cowan, Director, Department of Transportation, State of Arizona, CV 91–28139.
[6] "t"="per cargo tank."
[7] See footnote 5.
[8] The motor carrier fees are computed from the level of subsequent year legislative appropriations allocated for motor carriers divided by the number of motor carriers that are licensed to carry hazardous materials or registered to carry hazardous waste. For railroads, the $500 is an average. For Class I railroads, the fee can be apportioned among the railroads themselves as long as these railroads contribute 99.4 percent of the amount allocated to all railroads under the response program. Class II and III railroads pay the greater of .00115 percent of gross revenues generated in CA or $250. The legislation sunsets in 1995.
[9] "r"="rail carrier."
[10] The legislation sunsets June 30, 1995.

BIENNIAL STATE HAZARDOUS WASTE TRANSPORTATION FEE SURVEY ANALYSIS—DECEMBER 1992

Thirty states assess some type of fee on the transport of hazardous wastes.[1] This represents a net increase of one state hazardous waste fee over that reported in December 1990. This compares with 14 states that assess some type of fee on the transport of hazardous materials—a net increase of three. In five of those states imposing hazardous materials fees, carriers of hazardous waste pay the hazardous materials fee only, in seven of the states these carriers pay the hazardous materials as well as a hazardous waste fee, in one states carriers pay a hazardous waste fee rather than a hazardous materials fee, and in the last state, carriers of hazardous waste pay no fees.

Since December 1990, four states increased their fee assessments. At the same time, three states decreased fee assessments. The total amount of hazardous waste fees collected during the states' latest accounting year was $20,255,000. This figure does not include costs associated with various state bonding requirements, local permit fees, or sales taxes where applicable. This figure represents a 4 percent increase over the amount reportedly collected in the 1990 Biennial Fee Survey. The uses to which these funds were put vary. enty states reported that some or all of this money was dedicated for administration and enforcement of hazardous waste programs. In eight states, some or all of the money went to the general fund. In twelve states some or all of the money went to state Superfund match accounts or other environmental cleanup activities. One state said the funds were used for training, and another used the funds for research. Only two states specifically said the money

[1] Since NSWMA conducted this survey in December 1990, two additional states have instituted hazardous waste transportation fees, but one state whose fees were reported as a hazardous waste fee in the 1990 survey were in actuality a hazardous materials fee.

was used for transportation or transportation-related expenses such as emergency response.

All thirty states imposed fees on motor carriers of hazardous waste. Eights states imposed fees on rail and water carriers. Seven states imposed fees on air carriers.

In the five year period covering 1987-1991, US RR reported 845 incidents involving hazardous waste transportation. These incidents represent 2.2 of all hazardous materials incidents during the same period. The significance of this safety rating is best understood in comparison with the number of miles hazardous waste is transported. Trucks, which carry 98 percent of hazardous waste transported off the site of generation, account for 6.1 percent of all hazardous materials truck-miles travel led by commercial motor vehicles that carry hazardous materials 50 percent or more of the time. For the most part, vehicles that carry hazardous waste tend to be dedicated transport. When hazardous waste truck miles are compared to vehicles that carry hazardous materials 75-100 percent of the time, the figure rises to 12.7 percent of all hazardous materials truck miles. (Bureau of the Census 1987)

BIENNIAL SURVEY OF STATE HAZARDOUS WASTE TRANSPORTATION FEES[1]
December 1992

ST	FEE	BASIS[2]/TRANSPORTER[3]	TOTAL 000's	YEAR[4]	USE[5]	HM	BASIS/CARRIER	HM APPLIES	HW INCIDENTS[6]	HM INCIDENTS[7]
AL	Y	500c/AMW	56[8]	FY92[9]	AE	N			19	643
AK	N					N			2	57
AZ	Y	200/AMRW	6	91	SM,SE,AE	N			17	348
AR	Y	200c/AMRW	30	FY92	AE		100c/M[11] 75 removal	Y	14	526
CA	Y[12]	200c[10]/AMRW75v39u	680	FY92	AE		10-400c/M[13]	Y	68	2603
CO	Y					Y			11	563
CT	Y	500c/M	178	FY92	GR,SE	N			4	306
DE	Y	300c/M	42	FY92	AE	N	100c/M[14]		4	76
FL	N					Y	100v/M25t[15]	N	18	1283
GA	N					N		Y	9	1077
HI	Y					Y	3u/M5c		0	12
ID	Y	250v/M20t	109	FY92	AE,T	Y	1000c/M250v[16]	Y	5	104
IL	Y	250c/MW20u	664	FY92	AE,R	Y		N	57	2922
IN	N					N			27	1011
IA	Y	25c/M10t	86	FY92	AE,ER,SE,SM	N			6	764
KS	Y	250c/MR	100	FY92	GR	N			19	742
KY	Y	25c/M	17	FY91	AE	Y	25c/M	Y	18	543
LA	Y	200/AMRW[17]	63	FY92	SE	N			34	829
ME	Y	100c[18] 02p disposal 015p treatment/storage	420	91	SE,AE	Y	.15tonR[19]	Y	0	139
		AMRW[20]								
MD	Y	50u/M20d	247	FY92	SE,AE	N			13	637
MA	Y	1600c/M200v[21] 182g/0182p	6562	FY92	SM,AE,SE	N			12	495
MI	Y	500c/M200u[22]	1382	FY92	GR	Y	95c/M[23]	N	22	1127
MN	Y	500c~25v/M		AE	N				5	743
MS	N				N				4	414
MO	Y	100c/ARW10-100v/M[25]	400	FY92	GR	N			26	934
MT	N					N			0	81
NE	N					N			3	188
NV	Y					Y	600-1500v/M[26]100t		9	176
NH	Y	600c/MRW[27]100v100u/M	259	FY92	AE	Y	5v/M	Y	0	56
NJ	Y	225u25v/M635-15,600c[28]600e AMRW	3,190	FY90	AE	N		Y	16	937
NM	N					N			6	284
NY	Y	500u/M25c&e[29]	2888	91	AE,GR	N			21	1311
NC	Y	600/M	60	FY92	AE	N			35	1454
ND	N					N			0	35
OH	Y	25c[30]v/M	45	FY91	GR	Y	5-250v/M[31]	Y	73	2563
OK	Y	20u/M[32]	47	91	AE	N			11	309
OR	N					Y	500c/M[33]70t		21	378
PA	Y	200c/M[34]	2200	FY92[35]	SE,SM	Y	20v/M[36]70t	Y	49	2936
RI	Y	100c/M100v	80	FY92	GR	N			2	40
SC	N					N			17	378
SD	N					N			0	39
TN	Y	200c/MR[37]	81	~FY92	AE	N			25	1113
TX	N					N			49	2425
UT	N					N			4	388
VT	Y	10v/M	29	FY90	TR	N			2	57
VA	Y	80c/M[38]	2	FY92	AE	N			11	576
WA	N				N				48	478
WV	N					N			5	216
WI	Y	250/M	100	FY92	AE,GR	N			14	825
WY	N					N			3	166

1 Fees do not include bonding requirements or sales tax where applicable and are those imposed by states in addtion to any fees required by the Federal Government
2 Amounts payable annually unless otherwise indicated
'c' = company or business application
'd' = driver
'e' = key employee
'f' = per facility at a state vehicle terminal
'g' = gallon
'i' = per state issued EPA identification numbers only
'p' = pound
'r' = per trip
'u' = per unit carry unit
'v' = vehicle
3 'A' = air carrier
'M' = motor carrier
'R' = rail carrier
'W' = water carrier
4 FY = fiscal year July 1 - June 30
5 AE = Administration/Enforcement
EP = Emergency Response
GR = General Revenues
R = Research
SE = State Cleanup Environmental Priorities
SM = Safety Grand Match
T = Training
TR = Transportation
6 Total incidents for the 5 year period 1987 1991. Only highway and rail incidents are counted to make the comparison to hazardous waste incidents more realistic. However, haz waste incidents must be reported for both inter- and intra state movements, haz mat incidents which do not involve haz waste or haz substances only need be reported for inter state movements
7 See Endnote 6
8 Fee is payable every 3 years
9 FY October 1-September 30
10 If a company has more than 9 trucks, the per company fee is $500
11 An additional fee schedule is due out in 1993 that will require motor and rail carriers to fund the Hazardous Spill Prevention Account of the Rail Accident Prevention and Response Fund
12 Effective April 1, 1993 $55cM
13 1 5 vehicles$10, 6 10v$25, 11 50v$125, 51 100v$200, 101 300v$350, 301+over$400
14 Radioactive material only
15 PCBs, LPG and radioactive materials only
16 Infectious waste only
17 Only in state facilities pay the facility fee Out of state motor carriers pay $10/vehicle
18 $100c covers one c.v. and d. fees for each subsequent v or d's $50 each
19 Fee payable only if transporting at least 25 tons annually Fee capped annually at $25,000
20 Fees are capped at $15K/company Rates are doubled for imports unless the state from which the waste is being imported has a reciprocity agreement with Maine in which case the fees are the same for an in state carrier
21 $1200 renewal fees payable every 5 years
22 If the waste is a liquid an additional $10/c and $10/u fee is charged
23 Intrastate movements of bulk flammable and combustible liquids and gas only
24 See Endnote 8
25 For vehicle w GVW <36K 1 10 @ $50 each, 11 50 @ $25 each, 51 100 @ $20 each, 101+ @ $10/each For vehicle w GVW => 36K double <36K rate Motor carriers fees are capped at $15K/c
26 $500/1 5v, $1000/6 25v $1500/26+v
27 See Endnote 8
28 Company fee based on $635/1e $1,775/2 3e $5,150/4 7e $15,600/8+e In addition to c fee, each key employee is assessed an additional $600
29 Over 1 unit $200 each in addition the $25c application fee and a $5/u application fees are capped at $300 annually
30 The 'c' fee is payable one time only
31 Based on weight carried in previous calendar year 0 100K=$5, 100K 1ccpM$50, 1M+p$250
32 Formula for fee apportionment available for interstate carriers
33 Placarded radioactive or 'well logging' materials only Carriers operating under temporary OR [illegible] permits must pay $100/
34 $200 fee is payable biennially, also transporters pay $1 50/ton for waste transported to recycling and $3 00/t for all other destinations
35 See Endnote 9
36 Placarded vehicles operating on the Turnpike only First vehicle $20 additional vehicles $10 each Vehicle permits may be interchanged among vehicles
37 The first year there is an additional $100 processing fee
38 The fee is $120 for out of state companies Fees are payable every ten years

PREPARED STATEMENT OF THE CHEMICAL MANUFACTURERS ASSOCIATION

The Chemical Manufacturers Association (CMA) appreciates the opportunity to present the chemical industry's view on reauthorization of the Hazardous Materials Transportation Act (HMTA).

CMA is a nonprofit trade association whose member companies represent more than 90 percent of the productive capacity of basic industrial chemicals in the United States. The U.S. chemical industry employs more than 1 million people and had a positive trade balance of $16.3 billion in 1992. As major shippers of hazardous materials, CMA member companies are strongly committed to efforts to enhance the safe and efficient transportation of chemicals.

OVERVIEW OF CMA'S POSITION

The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), which reauthorized the HMTA, established an excellent framework for strengthening the existing regulations. The law requires a consistent foundation for employee training, sets the stage for improvements to the hazardous materials identification

system, and helps establish a system for collection and disbursement of funds for emergency response training. The law also establishes a structure for how states may designate highway routes and a mechanism for increasing consistency in state registration and permitting programs. CMA supports all of those provisions of HMTUSA.

While the Department of Transportation (DOT) has completed many of the actions mandated by law, a number are still in development. Even with the finished actions, it is too early to determine their effectiveness. Before Congress makes any revisions to the HMTA, CMA believes more time is needed to allow for complete implementation of HMTUSA and evaluation of its efficacy. Therefore, we support a "clean" reauthorization of HMTA.

STATUS OF MANDATED ACTIONS

DOT has completed several of the rulemakings and other actions mandated by HMTUSA, while others are in various stages of development. What follows is a review and evaluation of activity to date.

NATIONAL ACADEMY OF SCIENCES STUDY

The HMTUSA required DOT to contract with the National Academy of Sciences (NAS) to prepare a study on the "feasibility and necessity of * * * a central reporting system and computerized telecommunications data center" for tracking all hazardous materials shipments.

The NAS committee charged with performing the study recently completed and released its report entitled "Hazardous Materials Shipment Information For Emergency Response." The committee reached several important conclusions.

Although CMA does question some specific statements made in the study, we do concur with the finding that a central reporting system for all hazardous materials shipments "would be unlikely to function as intended or to produce benefits sufficient to justify its costs." We also agree that DOT, which commissioned the NAS study under an HMTUSA mandate, "should not attempt to implement" such a system.

Additionally, CMA agrees with the NAS committee that the current system for communicating emergency response information is successful, but improvements can be made. As the study notes, more aggressive enforcement, better training of responders, and some regulatory changes "might significantly reduce" any existing problems. CMA supports that position.

The NAS study also recommends some pilot testing of automated information systems. CMA notes that technology is evolving and several tracking and incident systems are in use today. The suggested pilot programs might prove useful in identifying how existing systems may be enhanced, but we question their value in determining criteria for a new system for emergency responders. It is important to keep in mind, as the study states, "technology probably is not the key to solving any of the problems, although it may play a complementary role."

IMPROVEMENTS TO THE HAZARDOUS MATERIALS IDENTIFICATION SYSTEM

In addition to the NAS study, HMTUSA required DOT to complete a complementary rulemaking on improvements to the hazardous materials identification system. This rulemaking (Docket HM-206) presents an excellent opportunity to make some useful regulatory changes. DOT has not yet finalized the rule initiated under the mandate.

CMA has offered DOT several suggestions for improving the placarding system. We support efforts to enhance the information available to responders as well as active enforcement of the regulations.

CMA looks forward to completion of this important rulemaking since the National Academy of Sciences study is now finished.

TRAINING

CMA supports the training regulation promulgated by DOT. This rule requires employers to furnish and document employee training, depending on the employee's involvement in hazardous materials transportation, by October 1, 1993. Our members have always considered employee training of paramount importance. To help companies train employees, CMA has developed training programs which are available to both members and nonmembers. DOT's regulation sets up a consistent structure by which to establish necessary hazardous materials training programs.

EMERGENCY RESPONSE TRAINING

Another significant DOT rulemaking established procedures for states to obtain grants from the federal government for training emergency responders. Trained emergency responders are a key element in hazardous materials safety, and CMA applauds efforts to increase their knowledge.

Government actions complement industry activities. For example, CMA actively assists emergency responders through our training programs and the Lending Library, which loans audiovisual materials to responders at no charge. These programs have reached nearly three-quarters of a million responders since 1985. As we will detail below, an inter industry initiative called TRANSCAER also promotes training of responders.

FEDERAL ROUTING STANDARDS

HMTUSA requires DOT to establish routing standards for states to follow when designating highway routes for hazardous materials transportation. CMA supports the intent of this provision because it encourages consistency and order in how states and localities make routing decisions and gives affected parties ample opportunity to participate in maintaining a safe and efficient routing system for hazardous materials. Participation by all knowledgeable parties in the process should result in the best decisions on routing, thereby enhancing safety.

UNIFORMITY IN STATE REGISTRATION AND PERMITTING

Under this provision, DOT contracted with the National Governors' Association and National Conference of State Legislatures to study and make recommendations on how states can establish uniform forms and procedures for registering and permitting shippers and carriers involved in the transportation of hazardous materials. DOT is required to implement the recommendations. The study is on schedule with a pilot program to be conducted over the next two years. CMA and individual member companies have worked closely with state government representatives to develop mutually beneficial recommendations.

REGISTRATION

The registration program is in place and about to enter its second year. CMA supported the regulation and believes that DOT established a fair and workable system. The registration program will provide needed funding for emergency response training and help give the DOT and the public a better idea of the universe of those involved in hazardous materials transportation. We continue to assist DOT in communicating the requirements of the rule to covered businesses.

We do, however, have one concern with the registration program. DOT has interpreted HMTUSA to require registration of domestic and foreign shippers and transporters. CMA believes the law gives DOT some discretion in this area. Careful consideration should be given to the possible international trade impacts if foreign entities are required to register. Imposition of a fee could result in retaliatory action against U.S. firms operating overseas. CMA has urged DOT to consult with the U.S. Departments of State and Commerce, along with foreign countries, to assess the implications of the rule. CMA urges Congress to clarify its intent for this provision of the HMTUSA.

INDUSTRY INITIATIVES

Appropriate regulations can promote safe and efficient hazardous materials transportation, but independent and voluntary industry activities are also essential to achieve those goals. CMA is involved in many such initiatives.

For example, CMA members are committed to Responsible Care, a voluntary industry initiative designed to continuously improve performance in health, safety and environmental quality. The safe transportation of chemicals is a significant component of the Responsible Care initiative. Under the Responsible Care Distribution Code, members are making great strides in areas of distribution activities such as risk management, compliance review and training, carrier safety, handling and storage and emergency preparedness.

CMA is also committed to assisting emergency responders through CHEMTREC—the Chemical Transportation Emergency Center. For over 20 years, CHEMTREC has provided a 24-hour toll free telephone service which allows responders at the scene of an incident to obtain timely information and technical guidance for mitigating both hazardous and non-hazardous materials releases. CHEMTREC can also establish a communications link between the scene and shippers of the materials involved.

Over the past several years, CMA has continually upgraded CHEMTREC. CHEMTREC now maintains a database of more than one million material safety data sheets (MSDS's) in a state-of-the art optical storage and retrieval system. The system allows faxing of MSDS's, which contain key health, safety and emergency response information about specific chemicals, directly to emergency responders.

CHEMTREC can also make telephone connections between responders and representatives of more than 12,000 chemical manufacturers and shippers and many major carriers.

Many third parties handle chemicals in the distribution chain. In the spirit of Responsible Care, CMA has worked with allied industries to promote safety. Recent examples are the Interindustry Rail Safety Task Force (consisting of CMA, the Association of American Railroads, and the Railway Progress Institute) and the Inter industry Bulk Chemical Highway Safety Task Force (consisting of CMA and National Tank Truck Carriers, Inc.). Both partnerships have resulted in development and implementation of recommended practices to enhance safety.

Another important initiative is TRANSCAER—Transportation Community Awareness and Emergency Response. Under TRANSCAER, industry is working with citizens to develop mutual understanding about the hazardous materials moving through their communities and providing guidance and training to emergency responders. TRANSCAER sponsors include CMA, the Association of American Railroads, National Association of Chemical Distributors, National Tank Truck Carriers, Inc., American Petroleum Institute, Hazardous Materials Advisory Council, American Trucking Associations, Inc. and The Chlorine Institute.

CMA continually looks for opportunities to work with related industry groups to promote mutual efforts on safety.

CONCLUSION

HMTA, as recently amended by HMTUSA, is an excellent law which addresses the key areas affecting the safe transportation of hazardous materials. DOT has implemented some provisions, but several are still in development. CMA believes these activities should be allowed to progress while all involved continually monitor their effectiveness. We recommend that Congress treat HMTA as a "work in progress" and reauthorize the legislation without revision.

The regulations developed under HMTUSA will help enhance hazardous materials transportation safety, but voluntary industry activities are also a key to success. CMA proactively develops and participates in such initiatives. These include Responsible Care, TRANSCAER, CHEMTREC and interindustry initiatives with our carrier partners. These initiatives, coupled with well thought-out regulation and aggressive enforcement, will foster a safe and efficient hazardous materials transportation system.

LETTER FROM M.L. MULLINS, VICE PRESIDENT, REGULATORY AFFAIRS, CHEMICAL MANUFACTURERS ASSOCIATION

JULY 19, 1993.

Mr. ALAN I. ROBERTS,
Department of Transportation
Washington, DC 20590

DEAR MR. ROBERTS: On April 29, 1993, the National Academy of Sciences (NAS) released a study (referenced above) on the need for and the feasibility of establishing a central reporting system and computerized telecommunications data center for tracking hazardous materials shipments. Under Section 25 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), which mandated the study, the Department of Transportation (DOT) is required to submit a report to Congress concerning the study's recommendations.

The Chemical Manufacturers Association (CMA) is a non-profit trade association whose members companies represent more than 90 percent of the productive capacity of basic industrial chemicals in the United States. Since CMA member companies are major shippers of hazardous materials and could be directly affected by DOT actions based on the study, we are offering the following comments on the NAS report.

SUPPORT FOR KEY CONCLUSIONS

CMA concurs with the key finding that a central reporting system for all hazardous materials shipments "would be unlikely to function as intended or to produce benefits sufficient to justify its costs."

CMA supports the report's conclusion that "improvements to the existing system for providing Information to emergency responders at hazardous materials incidents are necessary." CMA also agrees that "technology probably is not the key to solving any of the problems, although it might play a complementary role" and changes in regulation and training alone "might substantially reduce the problem."

We concur with the NAS report's conclusion that technology could not replace "the immediate, attention seizing warning of a hazard that the placard supplies."

On a related matter, on October 5, 1992, CMA submitted comments to DOT in Docket HM-206, "Improvements to Hazardous Materials Identification Systems." Like the NAS study, that proceeding was mandated by Section 25 of HMTUSA. In those comments which are attached, CMA recommended several modifications to the placarding system which could provide significant improvements.

RESERVATIONS ABOUT STATISTICS

CMA questions the NAS report's finding that emergency responders encounter "information failures" in 25 percent of hazardous materials truck incidents and 10 percent of hazardous materials rail incidents.

The report cites various reasons for these problems, such as poor training of emergency responders and vehicle operators and possible shortcomings in the regulations. While these may be legitimate problems, CMA questions the proportion of "information failures" presented in the report.

The study is contradictory on the statistical basis for its conclusions. The report acknowledges the "limited availability of data" and states that "better data could not be collected or analyzed within the scope and time frame of this study." Nonetheless, the NAS committee developed statistics and concluded that "despite the successes, the information system appears to have failed regularly."

Drawing conclusions from a sample based primarily on incidents investigated by the National Transportation Safety Board (NTSB) may not present an accurate picture. The NTSB only investigates major incidents, often those with fatalities, injuries or other serious problems. As a consequence, the 85 cases selected for study by NAS do not constitute an accurate sample of typical hazardous materials incidents. Thus, it is inappropriate to attempt to draw conclusions from such a skewed sampling, since few hazardous materials incidents are as serious as those reviewed by the NAS. Additionally, there is no evidence that the remaining incidents in the NAS report, 40 taken from the state of California, are representative of nationwide experience.

The information gleaned from the case studies may also be too sparse to justify valid conclusions. As the study notes, most of the California cases chosen were "limited to a review of brief incident reports" and the NTSB-derived cases were "developed almost exclusively from second-hand analysis of documentation."

While CMA agrees that more detailed study of incidents would be helpful to identify problems, we seriously question the validity of the study's conclusions on "information failures."

NEED AND EXPENSE OF PILOT STUDIES

The NAS recommends that DOT undertake pilot studies of automated information systems that could serve as the "foundation for a widely Implemented system." Specifically, the study suggests an initial pilot involving an existing railroad system that could be modified to allow responders to obtain information on rail car contents.

CMA has several reservations about the proposed pilots. The study says that a centralized reporting and computerized database system is not justified and concludes that technology will not solve most problems, yet recommends that the government launch pilot programs. We find the recommendation for pilot studies incongruent with much of the rest of the study. Technological solutions studied through the pilots would not correct many of the so-called "information failures" outlined in the NAS report.

As the study states, many perceived problems could be addressed through stronger enforcement, better training and regulatory changes. HMTUSA addressed all of these areas and as the Act moves toward full implementation, we should see improvements. It is also important to remember that the Incidents reviewed by the NAS occurred prior to implementation of the Act, hence the improvements resulting from HMTUSA were not factored into the NAS study.

Technology is evolving and several tracking systems are in use today. The suggested pilots may point out how to enhance existing systems, but we question their value in offering anything new. The amount of money that was suggested by the NAS committee could be better allocated to enforcement and training.

CMA suggests that DOT await the outcome of two of its existing projects before committing money and other resources to the pilots recommended in the NAS study. Both the Intelligent Highway Vehicle System (in which DOT is investing hundreds of millions of dollars) and the Houston Cooperative Emergency Planning Project (a joint Initiative of railroads, shippers and government) show promise for offering improvements in emergency response communication. These two projects should be completed and evaluated before DOT initiates new pilot programs.

CONCLUSION

While some improvement is possible, the existing system for providing information about hazardous materials shipments to emergency responders is successful. The DOT should not establish a central reporting system and computerized data center because it is neither necessary or justified.

CMA is skeptical of the NAS conclusions concerning "information failures" and believes further study is needed to identify any real problems. CMA also believes that DOT should await the outcome of ongoing experiments before committing resources to launching the pilot recommended in the study.

If you need any additional information or have any questions please contact Michael Heimowitz.

Sincerely,

M.L. MULLINS,
Vice President, Regulatory Affairs.

LETTER FROM TIMOTHY F. BURNS, ASSISTANT VICE PRESIDENT, FEDERAL GOVERNMENT RELATIONS, CHEMICAL MANUFACTURERS ASSOCIATION

AUGUST 4, 1993.

Senator JAMES EXON,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR EXON: During the Subcommittee on Surface Transportation hearing on July 21, 1993, a statement was made by Mr. Frederick H. Nesbitt, Director of Government Affairs of the International Association of Fire Fighters, concerning the use of funds raised by the registration program authorized by the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA). Mr. Nesbitt stated that he was concerned that monies from this fund were being used for purposes other than training public sector employees who are emergency responders at hazardous materials incidents.

The Chemical Manufacturers Association (CMA) supported the registration program included as part of the HMTUSA because it was targeted on training emergency responders. We would encourage the Surface Transportation Subcommittee to investigate whether these funds are in fact being used to train those who are emergency responders. The chemical industry shares the concerns of the IAFF that proper training resources be provided by the registration program and that those funds should be made available to assist training emergency responders.

Under the registration program, grants from the federal government are to be used to train public sector emergency responders. CMA has no direct knowledge that any of these funds have been used improperly. However, it would seem appropriate for the subcommittee to investigate the matter and determine whether recipients are following the guidelines prescribed by the Department of Transportation.

If you have any questions please feel free to contact me or Mr. Gary Griffith, Legislative Representative for Transportation.

LETTER FROM J.M. BRUNKENHOEFER, NATIONAL LEGISLATIVE DIRECTOR, UNITED TRANSPORTATION UNION

JULY 28, 1993.

Honorable J. JAMES EXON,
U.S. Senate,
Washington, DC 20510

DEAR SENATOR EXON: Thank you for the opportunity to appear with Larry Mann on July 21, 1993 before the Senate Commerce, Science & Transportation Committee.

One of the issues that was addressed in the testimony from rail labor concerned improper train makeup. There are complicated train track dynamics that affect train makeup. These include longer cars coupled next to shorter cars and the place-

ment of loaded cars in relationship to empty cars in the train. Rail labor feels very strongly that there needs to be legislation concerning this issue because we feel that improper train makeup has a direct impact on train derailments. A train derailment concerning hazardous materials obviously could have a devastating effect.

Along with supporting legislation to correct this issue, we would request a possible General Accounting Office study. We feel that such a study would reveal a widespread problem that definitely impacts rail safety. If a study is requested, we would like the study completed well in advance of the next Federal Railroad Administration safety authorization.

Sincerely,

J.M. BRUNKENHOEFER,
National Legislative Director.

PREPARED STATEMENT OF LEO R. TIERNEY, UNION PACIFIC RAILROAD CO.

I am Leo R. Tierney. I am Director—Hazardous Materials Management for Union pacific Railroad Company. My business address is 1416 Dodge Street, Omaha, Nebraska 68179. I have been employed by Union pacific for approximately 33 years, and I have been involved in an oversight capacity with Union pacific's transportation of hazardous materials during 14 of those years. In my present position, I am very familiar with Union pacific's transportation of spent nuclear fuel and the return movement of empty casks which transport spent nuclear fuel which I will refer to as radioactive material.

Union pacific operates in 19 states in the western two-thirds of the united States. We have approximately 14,500 miles of mainline track and another 18,000 miles of branch line and yard track. In 1991, Union pacific handled 4.3 million arloading5 of which approximately 340,000 carloads were hazardous materials regulated by the United States Department of Transportation. Movements via Union pacific of spent nuclear fuel including return movements of empty casks in 1991 totalled approximately 50 carloads.

Union Pacific has devoted an inordinate amount of time, money and energy to manage the safe and efficient transportation of radioactive material which is a minuscule portion of our overall rail traffic. Even projected increased volumes of radioactive material in the future when temporary or permanent storage facilities are opened will pale by comparison with Union pacific's other traffic.

Union pacific has had substantial involvement in the transportation of radioactive materials for the U.S. Departments of Energy (DOE) and Defense (DOD). Union Pacific receives these shipments in interchange from other railroads at St. Louis, MO, as well as other interchange points in Kansas, Iowa, California, Oregon, Washington and Utah, for transportation to the Idaho National Engineering Laboratory (INEL), DOE's facility at Scoville, Idaho. up has also transported fuel debris from a commercial reactor at Three Mile Island, PA and transuranic waste from various defense related facilities around the country.

We anticipate that the greatest impact from the results of DOT's study on the need for dedicated trains will be on Union Pacific. Other railroads have transported some of the high-level radioactive waste shipments. Historically, however, Union Pacific has participated in nearly all such shipments because the vast majority of them have been destined for INEL. Furthermore, DOE's current plans call for the establishment of the permanent national repository for high-level radioactive waste in Nevada, one of the 19 states that we serve.

It is Union Pacific's strong position that dedicated trains are essential for the movement of these radioactive materials in order to satisfy all the operational and safety considerations surrounding these movements. Dedicated train service is also necessary to accommodate the 35 mph operating restriction which is imposed by DOE/DOD for the transportation of these radioactive materials, including the movements of empty casks.

NAVAL REACTOR SHIPMENTS

For years, up has moved spent nuclear fuel from Navy submarines. DOE/DOD require escorts with these shipments. These escorts, usually Navy personnel, ride in a separate rail car. Consequently, whenever up receives these shipments, each one consists of a block of at least four cars, i.e., a buffer car, a cask car, a second buffer car and the escorts' rail car.

Union pacific and the other railroads involved in the movements must transport both the loaded movements of spent nuclear fuel and the empty cask movements at 35 mph, as required by the shipping instructions issued by DOE/DOD. In submissions to the Interstate Commerce Commission, DOE stated that this speed restric-

tion is necessary to prevent damage to the spent fuel cores (which are reportedly subject to scientific analysis at INEL) or to the cask and car during transportation. To the best of my knowledge, no other commodity that is moved in regular train service over Union pacific is restricted to 35 mph. Where special handling of other commodities based on weight or size has been required, shippers have been required to pay for the specialized service.

Beginning in the early 1980's, union pacific transported the loaded Navy casks in dedicated train service as a "special train" using "deadhead" crews and locomotives to transport the commodity. "Deadhead" crews are train personnel returning to their home terminal who would otherwise not have manned a train. This operating procedure was used because it was not possible to comply with the 35 mph restriction while at the same time providing good service to other customers who insist on rapid transportation over long distances. The deadhead crews and trains were used to hold down our costs to the extent possible. As a means of reducing costs as much as possible, special trains were used to move crews and locomotives back to their home terminals, but Union pacific's principal goal was to avoid the need to slow down entire trains to comply with the 35 mph restriction which applied only to DOE/DOD's block of cars. This dedicated train service was provided even though the Interstate Commerce Commission did not allow railroads to charge for the service, and Union pacific was required to absorb the cost of the service.

In the fall of 1990, after several decades of trying to fit DOE/DOD's limitations into our operations, Union Pacific changed its practice of transporting these casks in dedicated trains because of the substantial costs which were being incurred by Union Pacific as a result of moving the cars in this manner. It simply became too costly to provide the dedicated train service to the government free of charge from the numerous interchange points at which union Pacific was receiving the spent nuclear traffic. union Pacific's transportation plan for train operations also changed substantially in order to reduce the imbalance in train movements which had made "deadheading" crews and locomotives available. Union Pacific then implemented the present policy of placing loaded and empty casks on the rear of secondary trains or manifest trains which otherwise would move at 50 mph. (Secondary trains generally transport bulk commodities, such as coal or grain, or the empty cars used for those commodities. Manifest trains transport general merchandise in a variety of rail car types.) Because of the government-imposed speed restriction, it was and is necessary to restrict the speed of these trains to 35 mph.

The 35 mph restriction for any train impairs Union Pacific's operational efficiency. That is magnified when an entire train with other commodities, like a secondary train or a manifest train, must be held to 35 mph as required by DOE/DOD. Much of Union pacific's system is high speed, high density railroad. In other words, union Pacific operates one hundred or more trains per day regularly over many portions of its system. These trains are operated at speeds ranging from 50 mph to 70 mph. A 35 mph train impedes the efficient and safe movement of these other trains.

Union Pacific operates through freight trains over its main line trackage, including the approximately 1,500 miles of trackage between the principal interchange point of St. Louis and Scoville, ID, at maximum speeds of 70, 60, and 50 mph. Main line locals also operate at 50 mph. FRA Class 5 trackage allows freight trains to operate at a maximum speed of 80 mph, and on FRA Class 4 trackage at 60 mph. Much of union Pacific's track on routes to Scoville are Class 4 or Class 5. union Pacific's timetable (a copy of which I will provide) sets forth the maximum permissible speeds by track segment and by equipment.

It is not feasible to use local trains (which are slower trains scheduled as needed to pick up and deliver traffic to industries located around major terminal areas) to transport this spent nuclear fuel traffic at 35 mph. Local trains do not operate continuously over the entire transportation corridor on Union Pacific over which spent nuclear fuel moves. Locals which do operate in some parts of the St. Louis-scoville, ID corridor, for example, operate at 50 mph, and would be severely restricted by a 35 mph limitation. Most of these locals' time is spent switching industries, not running between terminals. They simply do not have adequate track time to permit efficient service to shippers at 35 mph.

As I have indicated, both the loaded and empty cask cars must move at 35 mph pursuant to the instructions set forth on the bills of lading by DOE/DOD. As a result of this government-imposed speed restriction on both the empty and loaded movements, Union Pacific must slow down an entire train, which normally consists of approximately 80-100 cars, solely because of the restriction for DOE/DOD's block of cars. This substantially reduced speed results in undue delay for the numerous other cars in the train and results only because of DOE/DOD's insistence on the speed restriction.

Union Pacific places adequate locomotive power on trains to maintain maximum allowable speeds to ensure schedule performance and reliable service. This also allows trains to operate over longer crew districts. In the past 15 years most of the crew districts have doubled in mileage. During the same period, the Hours of Service Act allowable duty time for train and engine crews was reduced from 16 hours to 14 hours, and finally to 12 hours today. These long crew districts require high speed operations in order to traverse the crew districts within the federal limits on the hours of service a crew member may perform. Trains are no longer powered to the maximum tonnage rating of the locomotive, but rather on a horsepower/tonnage ratio to meet the maximum speed requirement. In most instances, trains consistently cannot traverse the longer crew districts within the Hours of Service Act requirement because of the 35 mph restriction. Therefore, trains must be stopped in between terminals, often at remote areas, in order to relieve the crew with new personnel.

Union Pacific trackage is maintained to a high standard to ensure that trains can operate safely at high speeds. The ability to move traffic faster allows Union Pacific to remain competitive and to provide satisfactory service to customers. Movement of government radioactive waste shipments with a speed restriction of 35 mph in regular train service penalizes all of the shippers having traffic on such a train because of the demands of one customer, the United States government. Service is the most important need of a railroad's customers. That need is being jeopardized by one speed restricted block of cars in the train.

I have attempted to describe the burdens on both Union Pacific and other shippers which result from the government-imposed 35 mph restriction. We have tried to accommodate DOE/DOD by moving these loads at 35 mph in trains made up of empty cars or loads of non-time sensitive shipments. Our objective is to satisfy DOE/DOD requirements without incurring exorbitant costs or losing other customers whose shipments are impeded by these movements.

It is difficult, however, to adequately portray in words the actual extent of the operational problems which do result from the restriction. As a means of permitting Department of Transportation representatives to obtain first-hand knowledge of these problems, I invite DOT representatives to travel with a movement of spent nuclear fuel over union Pacific trackage from the point at which the radioactive material is received in interchange from Union Pacific's connecting carrier to the final destination. It would be necessary for any individuals making this trip to be accompanied by a Union Pacific operating officer and also to sign a release form. I may be contacted personally during this workshop or later to discuss arrangements for this trip.

THREE MILE ISLAND CAMPAIGN

Beginning in 1986, Union Pacific participated in the movement of fuel debris from the damaged reactor at Three Mile Island, PA. The cask cars, buffer cars and escort cars were moved by Conrail to East St. Louis. union Pacific completed the rail transportation from there to scoville, Idaho.

All shipments moved in dedicated train service with the agreement of DOE and its contractor, EG&G. I personally worked on this campaign and, in fact, rode on several of the trains between St. Louis and scoville, Idaho.Dedicated train service was indispensable for a number of reasons:

1. The dedicated trains handling these shipments bypassed major classification yards at East St. Louis, Kansas City, North Platte, NE and pocatello, ID, thus reducing the handling of the cars and switching operations.
2. Dedicated trains have less rail equipment and cars. Consequently, there is less likelihood of equipment failures which could not only slow the train, but also stop it by causing a derailment.
3. These trains were able to move more efficiently with other traffic on the mainline.
4. A train transporting a single commodity has fewer gross tons and is easier for the train crew to handle.
5. The continuous surveillance requirements of DOE/DOD and NRC for high level radioactive waste are more easily met by using dedicated trains because, not only the train crew, but also escorts on and off the train can observe the entire train consist.
6. It satisfied public and political concerns that these shipments, which were (and are today) perceived as highly hazardous, are given the special treatment and handling they deserve.

7. Dedicated service enabled the railroads to quickly and more efficiently return the empty casks to Pennsylvania for reloading. This, in turn, enabled the campaign managers to complete the program more quickly and with fewer casks and cars.

8. From an operational and safety standpoint dedicated trains enabled Union pacific to accommodate federal and state imposed radiological inspections, state-provided off-train escorts, time-of-day restrictions and other limitations imposed by DOE without delaying other traffic.

Battelle Memorial Institute studied the TMI campaign and others. It summarized the issues and lessons learned from these campaigns in its May 1988 Technical Report. I have attached a copy of that summary to my statement and urge DOT to consider those lessons in determining whether or not dedicated trains are necessary.

One of the primary lessons is to expect public opposition to all modes and routes. Dedicated train service alleviates at least some of that public opposition because the movements occur over a railroad's private right-of-way separated from public transportation and subject to special controls and scrutiny when it is the only commodity on the train.

OTHER REASONS FOR DEDICATED TRAINS

In addition to our TMI experience, general railroad operating experience encourages the use of dedicated trains. These reasons are as follows:

1. Use of a single commodity train eliminates the potential for exposure in a derailment to hazardous materials or other combustible ladings which could cause damage to the cask and its contents.

2. A shorter train is more manageable. Slack and run-in are easier to control. It can be stopped quicker. Control of slack action in hilly terrain is easier. It is also easier to interchange between railroads. Less switching and handling is involved when each railroad need only attach its locomotive to the block of DOE/DOD cars.

3. Finally, it has been our experience that these shipments often become political footballs tossed back and forth between federal and state officials or even among officials in the same state. Dedicated train shipments are clearly easier to move and, when necessary, to return to their origin or some other temporary site specified by the government.

I thank you for the opportunity to appear on behalf of union Pacific Railroad Company.

QUESTIONS ASKED BY SENATOR EXON AND ANSWERS THERETO BY MR. OLEKSZYK

HMTUSA—MANDATED REPORTS

Question. What is the status of HMTUSA-mandated reports required to be undertaken by the Federal Railroad Administration (FRA)? When will these reports be completed?

Answer. The FRA was tasked with performing three studies under the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) (secs. 15 and 21). The status of each is provided below:

Highly radioactive materials—"railroad transportation study." The purpose of this study is to compare the safety of using dedicated trains for transporting high-level radioactive waste and spent nuclear fuel with other methods of rail transportation of such materials. The report was due one year after enactment (11-16-91). It was delayed until appropriations to fund the study were received in the FY'93 budget. Once funded, the Volpe National Transportation Systems Center (VNTSC) started working on the report. The Department plans to submit the report to Congress in March of 1994.

Highly radioactive materials—"mode and route study." The mode and route study is evaluating what factors shippers and carriers should use in selecting routes and modes for transporting high-level waste and spent nuclear fuel. The report was due one year after enactment and was also delayed until appropriations to fund the study were received in FY'93. The project is expected to be completed in early 1994.

Railroad tank car study. The railroad tank car study, conducted by an expert panel, is examining the tank car design process, including specification development, design approval, repair process approval, repair accountability, and the process by which designs and repairs are presented, and evaluated. The statute also required the panel to recommend whether head shields should be installed on all hazardous materials tank cars. The report was due one year after enactment and was also delayed until appropriations to fund the study were received in FY'93. The Transportation Research Board panel is actively pursuing its mission. The project is expected to be completed by September of 1994.

RAIL TANK CAR SAFETY ISSUES

Question. Mr. Mann, on behalf of the Railway Labor Executives'Association, testified that type 111 tank cars now in use by the railroad industry are "ticking time bombs." What is FRA's response to this assertion? Approximately how many type 111 tank cars are currently in use in the railroad industry? What regulatory standards apply to specific hazardous materials which may be transported in these tank cars, as opposed to other types? How does the accident experience of type 111 cars compare with other models of tank cars now in use?

Answer. There are approximately 160,000 DOT Class 111A tank cars in use today, about two-thirds of the North American tank car fleet, and they remain a critical resource for movement of industrial chemicals and other materials in commerce.

DOT Class 111A tank cars are constructed of a minimum of 7/16 inch American Society for Testing Materials (ASTM) type 516 carbon steel plate and they are equipped with shelf couplers. These tank cars meet the applicable requirements in Title 49 CFR Part 179. A majority of Class 111A cars are insulated and jacketed in order to offer the capability of maintaining product temperature during transportation. However, most are not equipped with head shields or high temperature thermal protection. Class 111A tank cars are sometimes referred to as general service cars or low pressure cars.

These tank cars carry nonregulated products as well as regulated hazardous materials with relatively low vapor pressures. As a general matter, only those hazardous materials that pose low to moderate hazards (i.e., those materials listed in Title 49 CFR 172.101 that are referenced to bulk packaging Sections 173.240, 241, 242, and 243) are allowed to be transported in DOT Class 111A tank cars. After October 1, 1993, all liquid materials that meet the definition of a material poisonous by inhalation, that may be currently transported in 111A cars, will be required to be transported in "pressure" tank cars that offer greater protection in accidents.

Pressure tank cars (Classes 105, 112, and 114) are constructed of thicker and higher strength steels, are required to have the valve arrangements enclosed within a protective housing, and may not, except for the small 114 fleet, have bottom openings. These cars transport certain pyrophoric liquids (Division 4.2), dangerous when wet materials (Division 4.3), poisonous liquids (Division 6.1), and a variety of compressed gases (Division 2.1, 2.2 and 2.3). Most pressure tank cars have tank head protection, and cars carrying flammable gases also must be equipped with high temperature thermal protection. Class 105 pressure cars are equipped with ambient temperature insulation, while Classes 112 and 114 are not.

FRA has examined the accident history of Class 111A tank cars. Tank Car Accident Data Analysis, by Morrin E. Hazel, Jr., in June 1991, analyzed the characteristics of individual tank cars in 654 reported train accidents between 1981 and 1985 that involved hazardous materials. In its 1989 report, Analysis of Tank Cars Damaged in Accidents 1965 through 1985, (Report RA-02-6-55), the RPI-AAR Tank Car Safety Research and Test Project also examined tank cars in accidents and used the number of tank car movements to normalize the data. Although both reports confirm that the number of tank car accidents is small compared to the total tank car population and to the total quantity of hazardous materials moved by tank car, this is not the whole story.

Read against the background of accident experience, and in light of mandated improvements in tank car construction over the period, the research suggests a rough hierarchy of tank car survivability, taking into consideration such events as head punctures, shell punctures, and thermal failure (the major catastrophic events associated with train accidents involving hazardous materials). Within that hierarchy, non-insulated Class 111A cars are the least resistant to loss of product in an accident scenario.

Based on the report and FRA's accident investigation experience, it appears that the following attributes enhance the likelihood of survivability, albeit not necessarily in the order presented:

- Increased tank shell wall thickness (normally associated with pressure tank cars);
- Jacketed design (i.e., the presence of a steel jacket surrounding insulation, high temperature thermal protection as needed, heating coils, etc.);
- Presence of high temperature thermal protection (with respect to commodities requiring this feature);
- Tank head protection (head shields); and
- Shelf couplers.

Of these attributes, non-insulated 111A cars typically have only shelf couplers (although some are built with tanks that are thicker than required), and the accident

experience reflects that fact. Jacketed (insulated) 111A cars perform better in accidents, but not nearly as well as jacketed pressure cars equipped with head shields and thermal protection.

Because of these considerations, since the early 19705, FRA and the Research and Special Programs Administration (RSPA) have been engaged in a program of progressive improvement in the hazardous materials tank car fleet with respect to crashworthiness. This program has proceeded from those cars used to transport the most hazardous commodities to those cars carrying commodities posing relatively less serious hazards. At the same time this process of regulatory change has been underway, four trends have complicated the analysis:

1. The frequency of serious railroad accidents has declined (i.e., the service environment has improved);
2. The types of chemicals transported have changed to some extent;
3. Knowledge of both short-term and long-term effects of unintentional releases has improved with regard to chemicals that pose acute health hazards and hazards of catastrophic explosion or fire, thus adding some commodities to "priority" lists and elevating the priorities of others; and
4. Environmental legislation enacted in 1980 required the Department to add to the list of hazardous materials thousands of environmentally hazardous compounds for which long-term health risks are not well known, greatly complicating the regulatory task.

Early efforts to improve tank car crashworthiness focused on uninsulated pressure tank cars (Classes 112 and 114), with installation of tank head protection and high temperature thermal protection on flammable gas cars required by the final rule in RSPA Docket No. HM-144. Insulated pressure cars (Class 105) transporting the same products and ethylene oxide were required to be fitted with head protection and thermal protection under Docket HM-175. These two rules also required the installation of head protection for tank cars transporting anhydrous ammonia. As a result of the implementation of international packaging standards in Docket HM-181, liquid materials poisonous by inhalation will be required to be transported only in pressure tank cars equipped with head protection and jackets effective October 1 of this year.

The general service car carrying other commodities has not been neglected: All tank cars carrying hazardous materials have been required to be fitted with top and bottom shelf couplers since March 1, 1985 (Docket No. HM-174).

Currently, FRA and RSPA are finalizing a notice of proposed rulemaking under Docket HM-175A which will address additional car/commodity combinations, including those involving general service tank cars. It is expected that this NPRM will be issued by September 30.

The trend line established through this program of tank car improvements has been and will continue to be both a gradual reduction in the role of the 111 car with respect to hazardous materials transportation and modifications to that car where warranted. Through our Office of Research and Development, FRA is continuing to study car/commodity combinations with respect to the need for further improvements. Following receipt of the HMTUSA tank car study, completion of ongoing research, and completion of the rulemaking in Docket HM-175A, FRA and RSPA may propose additional measures to improve hazardous materials tank car survivability.

The pace of change in this area is a matter of concern to FRA, even though accident exposure is down and the commodities posing the most serious risks have been addressed. However, the following factors argue against excessively hasty action:

- Risk reduction is not equivalent to the elimination of risk. Product loss has occurred even where jacketed and fully retrofitted pressure tank cars have been involved.
- Limited tank car construction capacity exists in the country, and most of that capacity will be fully exploited over the next few years due to existing regulatory mandates (including inspection and repair of stub sill cars under Emergency Order No. 17).
- Disallowing use of 111 cars for hazardous materials service could have countervailing adverse impacts that must be weighed against improved accident survivability. For instance—

  —Current 111A cars offer the greatest product capacity per movement, thereby reducing the number of loadings/unloadings, switching movements, and car trips associated with the movement of the lower hazard commodities they transport; and

  —For some products, the additional number of trips (and associated transportation charges) associated with a heavier car would translate into higher costs for shippers and consumers, possibly leading to diversion of some shipments to the highway mode. Although absence of good traffic data in the highway mode

makes comparisons difficult, it appears likely that highway transportation of hazardous materials is less safe than risks currently encountered in rail transportation.

Question. Please outline the steps that the Department of Transportation (DOT) has taken to respond to recent recommendations issued by the National Transportation Safety Board (NTSB) pertaining to railroad hazardous materials transportation safety. For the record, please indicate which NTSB recommendations have or have not been implemented and why. Please address specifically the NTSB recommendation that FRA, with the cooperation and assistance of the Association of American Railroads (AAR), the Railway Progress Institute, and the Chlorine Institute, evaluate nondestructive testing techniques and determine how such techniques can best be applied for periodic testing and inspection of all tank cars that transport hazardous materials.

Answer. FRA carefully considers each NTSB recommendation. In most cases, action is taken consistent with the recommendation. In other cases, FRA and the Board discuss alternative action that may be consistent with the intent of the recommendation. In the hazardous materials area, FRA and the Board have been in harmony on each major substantive issue.

Safety Recommendation R-89-80 encourages the Secretary of Transportation to evaluate the present safety standards for tank cars transporting hazardous materials by using safety analysis methods to identify the unacceptable levels of risk and the degree of risk from the release of a hazardous material. FRA awarded a contract to Technology and Management Systems, Incorporated to perform a safety analysis concerning the relationship between the tank car, safety relief valve settings, and chemical compatibility. The first phase of this effort is complete, and a second phase addressing additional products is commencing.

Safety Recommendation R-92-21 requested FRA to evaluate, with the cooperation and assistance of the AAR, the Railway Progress Institute, and the Chlorine Institute, nondestructive testing (NDT) techniques and determine how such techniques can best be applied for periodic testing and inspection of all tank cars. FRA agrees with the thrust of the recommendation. We are actively pursuing actions to answer the Board's recommendation through rulemaking, research, and cooperative efforts in the context of the AAR Tank Car Committee. Use of non-destructive testing techniques is also required under Emergency Order No. 17 (inspection of stub sill tank cars) and Emergency Order No. 16 (inspection of dual diameter tank cars). (Emergency Order No. 16 was also responsive to NTSB Recommendation R-92-7.)

Safety Recommendation R-92-22 encourages FRA to develop and promulgate, with RSPA, requirements for the periodic testing and inspection of rail tank cars that help ensure the detection of cracks before they propagate to a critical length by establishing inspection intervals that are based on the defect size detectable by the inspection method used, the stress level, and the crack propagation characteristics of the structural component (based on a damage-tolerance approach).

Prior to receipt of this recommendation, FRA prepared the regulatory text for RSPA to issue an Advance Notice of Proposed Rulemaking (ANPRM) on crack and flaw detection (RSPA Docket No. HM-201). RSPA issued an ANPRM concerning the detection of cracks, pits, corrosion, and lining flaws on December 8, 1989. Use of non-destructive testing techniques and identification of cracks prior to failure were principal themes of that document. A Notice of Proposed Rulemaking in that proceeding, which addresses the damage tolerance concept, is presently in clearance within the Executive Branch and should be issued prior to September 30, 1993, as required by the DOT and Related Agencies Appropriation Act, 1993.

FRA, in conjunction with RSPA, has collected literature and experience on various possible alternative nondestructive testing methods and procedures. Among these methods is acoustic emission testing. Preliminary results show that other methods are more reliable and less costly to use than acoustic emission. Although many of these techniques are sufficiently advanced, further studies are needed to identify the types of critical defects and the identification of test and inspection methods that should be used. FRA will be working with the AAR Tank Car Committee to further develop NDT inspections for tank cars, including acoustic emissions testing.

FRA initiated action by recommending a restructuring of the AAR Tank Car Committee so as to include a working group on quality assurance and inspections and tests. A restructuring of the Committee took place in March of 1993. FRA is prepared to work jointly with the industry towards improving the inspection and testing requirements for tank cars. FRA will be working with the AAR Tank Car Committee to (1) conduct root cause analysis, such as defining the nature of cracking, typical loading spectra expected on the tank in actual service, crack initiation sites and mechanisms and a crack growth model; (2) determine the allowable flaw size using failure/acceptance criteria; (3) propose modifications to tank car design, such

as multiple load paths and the use of materials that provide a reduced rate of crack propagation combined with high residual strength; and, (4) require the arrangement of design details, like bottom discontinuities, to reduce stress concentration points.

Question. The Committee understands that in response to the discovery of serious cracks on a large number of certain types of tank cars transporting hazardous materials, FRA issued an emergency order regarding these cars. What did this order require? How is the FRA ensuring that industry is implementing the inspection schedule specified in the order? Does this emergency order permanently address this critical safety issue?

Answer. In response to the discovery of a large number of serious cracks found in tank cars with stub sills, FRA issued Emergency Order No. 17, Notice No. 1 [57 FR 41799], on September 3, 1992, requiring each owner of stub sill tank cars to: (1) comply with the AAR Tank Car Stub Sill Inspection Program, and the AAR Tank Cars Stub Sill Inspection Procedure, developed in cooperation with the FRA; (2) not return cars to service following their inspection until all defects have been repaired and the tank car is in total compliance with Federal railroad safety regulations, including the Hazardous Materials Regulations and the AAR Tank Car Manual; (3) inspect a proportionate number of cars each year that the Inspection Program is in effect (i.e., all jacketed cars, including cars with nonjacketed thermal protection systems, to be inspected and all defects/cracks repaired within 5 years; and all nonjacketed cars to be inspected and all defects/cracks repaired within 7 years); and (4) submit all inspection reports monthly in computer-read format to a central data base processing contractor.

Preliminary data indicate about 80,000 insulated cars will be inspected within 5 years and about 40,000 noninsulated cars inspected within 7 years. If at any time during the inspection program, FRA finds that a particular group of cars are plagued with problems these cars will be placed in an accelerated inspection schedule.

FRA is continually monitoring the inspection data submitted. Each month, the most current data is sent to the FRA by the AAR. FRA staff compares raw data that FRA Hazardous Materials Inspectors gather from the various shops performing stub sill inspections against the monthly AAR report. If necessary, investigations are conducted by Hazardous Materials inspectors for resolution of any discrepancies. The first year of the inspection program ends September 3, 1993. After the first year's data is reviewed and analyzed, FRA will evaluate each owner's inspection progress. If FRA determines the progress of inspections to be insufficient, appropriate action will be taken.

The inspection program is expected to be completed on time and, upon its completion, AAR's Interchange Rule 88 BI takes effect, requiring all tank car stub sills to be inspected at least once every 10 years. The Interchange Rules and the FRA order apply to cars without regard to whether or not they are transporting hazardous materials. The amendment to require a 10-year inspection interval was at least partially a result of FRA's urging that it be done.

Question. Railroad tank cars traditionally have been painted black. Based on FRA's ongoing review of the effectiveness of conspicuity technology, would simply painting rail tank cars a more visible color provide for greater safety at railroad grade crossings at night? Should such a requirement be imposed on new tank cars?

Answer. In light of improvements in retroreflective material and changes in highway-rail crossing safety programs, FRA is sponsoring research to update a 1982 report on reflective materials on railroad freight cars. Tests have been conducted at the Transportation Test Center in Pueblo, Colorado, to measure performance and to establish the optimal size and position of the materials on freight cars. Full scale testing involving several railroads is currently underway in Virginia, Tennessee, Kentucky, Ohio, Indiana, Illinois, and Alaska. Upon completion of these tests later this year, FRA will be better able to address these Issues. At the present time, use of retroreflective materials appears to be a more promising means of improving the conspicuity of rail rolling stock than use of lighter paints.

FEDERAL/STATE ENFORCEMENT

Question. What progress has FRA made in bringing State hazmat inspectors into the Federal/State enforcement partnership?

Answer. Final regulations facilitating State participation in the hazardous materials discipline were published June 24, 1992 (57 FR 28112). FRA has been successful in the past year in bringing 14 State hazardous materials (hazmat) inspectors from 9 States into the State Participation Program. With one exception, all State hazmat inspectors have been certified after extensive on-the-job training.

FRA is committed to a thorough training program under which State inspector training is equivalent to Federal inspector training. In the past year, State hazmat inspectors have attended four formal classroom training courses (two FRA Orientation Training Courses, one RSPA Basic Hazardous Materials Compliance and Enforcement Course, and one Tank Car Design and Shop Evaluation Course) and informal FRA regional training conferences in each region. State inspectors will also participate in the Advanced Hazardous Materials Course in September 1993.

Where states have participated in writing violations against railroads in any discipline, including hazardous materials, they are informed of, and invited to, claims collection conferences conducted by FRA's Office of Chief Counsel.

FRA has been working through a joint State/Federal task force to enhance the quality and scope of our efforts under the State Participation Program. Additional opportunities for enhancing State participation will be discussed at the first plenary meeting of all participating States and FRA in Washington, D.C., on September 24, 1993.

HOUSTON COOPERATIVE EMERGENCY PLANNING PROJECT

Question. Please provide further information regarding the Houston Cooperative Emergency Planning Project. In what ways might this project be expanded or modified in order to meet the recommendations of the National Academy of Sciences for a pilot hazmat communications link?

Answer. HMTUSA required the DOT to investigate the prospect of establishing a central reporting and computer telecommunications data center to track hazardous materials shipments. In order to properly assess the magnitude of such an undertaking, the National Academy of Sciences (NAS) was contracted to conduct a study on the feasibility and necessity of establishing and operating a nationwide central reporting system and computerized telecommunications data center to improve information for emergency responders. As conceived, the center was expected to receive, store, and retrieve data concerning all daily shipments of hazardous materials by any mode of transportation, and to provide information to facilitate responses to accidents and incidents involving the transportation of hazardous materials.

The NAS study concludes that improvements to the existing system for providing information to emergency responders are needed, but rejects the concept of a national center. The study suggests utilizing several experimental systems for development of a workable and dependable set of proven standards (e.g., procedures and formats). These findings would tend to support the feasibility of utilizing the Houston project to serve as an initial project. The Houston project provides a multi-faceted and realistic type of environment as it involves four railroads, a large terminal with extensive switching being performed daily, and a shipping district concentrated in petrochemicals.

The Houston Project as now conceived focuses, in part, on very practical means of providing emergency responders direct access to carrier data bases. The FRA believes that this effort should be developed incrementally and that lessons learned should then be documented. This practical interaction between highly trained responders and carriers, utilizing systems that support other business purposes, is highly consistent with the recommendations of the NAS report.

OTHER SAFETY ISSUES RAISED AT THE HEARING

Question. Mr. Mann testified on behalf of the RLEA regarding a number of additional safety issues of concern to rail labor, including: (1) allocation of training funds; (2) workers' exposure to hazardous materials during cleanup operations; (3) potential for contraction of silicosis; (4) exposure to diesel exhaust; and (5) train make-up and the location of tank cars in trains. For the record, please provide FRA's view as to each of these issues and specific administrative remedies, if any, which have been or will be proposed in response to these concerns.

Answer. Hazardous materials training regulations, initiatives, and funding are programs administered by RSPA. Regarding the same training funds issue addressed by Mr. Mann, RSPA recently replied to the Brotherhood of Railroad Signalmen as follows:

> Congress made two provisions for hazardous materials employee training in the reauthorization of the HMTA: The employee training requirements under section 106 and the private sector employee grant program under section 118.
>
> Under section 106 RSPA has extended its training regulations to include all hazardous materials employees. To implement the training requirements, RSPA requires that hazardous materials employers train their hazardous materials

employees. This training is the responsibility of, and is paid for by, the hazardous materials employer.

Since training by private sector employers is required, DOT views the provision of grant funded training to the same employees as an unnecessary expenditure of Federal funds. In addition, Congress limited the total funding available for all elements of the program to $11 million and provided DOT with the discretion to decide how best to spend the funds. DOT has elected to maximize funding available to the State grantees that are the primary focus of the HMTA grant program.

Concerning workers' exposure during cleanup operations, FRA, in response to an NTSB safety recommendation (I-79-13), published a guidelines manual and an accident management orientation guide in 1983. These manuals give special attention to the handling of rail cars containing hazardous materials following a derailment. The guidelines include precautionary warnings; technical assistance and information; protective clothing, gear, and equipment; selection of wreckage removal contractors; product transfer; and information on assessing the scene and identifying danger areas. In June 1992, FRA published an updated research report on field product transfer methods for damaged or derailed tank cars. The methods described represent the proven techniques for transferring product while ensuring overall site safety. In March of this year, FRA published information to give railroads guidance in the development and review of hazardous materials emergency response plans. These reports are available through the National Technical Information Service and were made available to railroad representatives.

Furthermore, on March 6, 1989, the Occupational Safety and Health Administration (OSHA) issued a final rule on hazardous waste operations and emergency response. OSHA's preamble discussion, and the regulatory language following it on emergency response, makes clear that OSHA's regulations currently apply to railroads (54 FR 9294, 9309).

Preliminary studies of Maintenance-of-Way (MOW) employees exposure to silica dust during maintenance operations have been conducted by the National Institute of Safety and Health (NIOSH) and by the Norfolk Southern Corporation (NS). While the environmental monitoring results are similar, the studies reached somewhat different conclusions. FRA concludes that there is a potential for danger to MOW employees from silica dust and agrees with NIOSH that there is a need for further environmental monitoring to determine the existence and extent of excessive silica exposures to MOW employees. Currently, the regulation of silica dust comes under the jurisdiction of OSHA, which possesses the pertinent expertise and has standards in place to address this issue. OSHA is pursuing enforcement actions where it has evidence that regulatory standards have been violated.

Exposure to locomotive diesel exhaust can occur through at least two paths. First, leakage of exhaust prior to intended venting can result in serious and immediately toxic effects. Proper maintenance of the locomotive exhaust manifold is a major and continuing emphasis in FRA's locomotive safety enforcement program, and compliance is generally good. However, even properly vented diesel fumes can enter a locomotive cab through open windows or other apertures and produce secondary exposure. From time to time, FRA receives complaints regarding such exposure.

FRA has performed measurements of diesel emission products in all types of locomotives, and in the 1970s sponsored a study to evaluate the health and safety implications of diesel locomotive emissions. At that time, no evidence was found which indicated a chronic problem or linked diesel emission exposure in railroad operations to long-term health effects.

In the last two years, FRA has investigated 14 complaints of excessive diesel exhaust emissions. The air quality tests conducted did not indicate that any of the principal gasses that are major components of diesel exhaust reached a threshold detectable by the appropriate method used for testing. While FRA recognizes that railroad operating crews may experience nuisance irritations from diesel emissions, our measurements have very rarely uncovered situations where health based standards for exposure to the chemical components of diesel exhaust were exceeded.

The National Institute for Occupational Safety and Health published Current Intelligence Bulletin 50, dated August 1988, Carcinogenic Effects of Exposure to Diesel Exhaust. The purpose of this bulletin is to disseminate information on the potential carcinogenicity of diesel exhaust. The Bulletin suggested only very weak relationships between exhaust exposure and lung cancer.

Recently, a professional journal carried a clinical evaluation of three cases of asthma judged by the writer to have been caused by acute exposure to allegedly high concentrations of diesel fumes in trailing locomotive units. As a result of that article, NIOSH has been asked by a rail labor organization to undertake a health eval-

uation of this exposure. FRA will monitor this activity and provide assistance if requested.

Section 10 of the Rail Safety Enforcement and Review Act requires she FRA to complete a rulemaking proceeding, within 30 months of enactment, to consider regulations to improve the safety and working conditions in locomotive cabs. Diesel emissions are one of the subjects under consideration in the context of this study, and FRA will report any further findings in the required report.

Responding to the concerns dealing with in-train placement, FRA is currently drafting a rulemaking (RSPA Docket No. HM-201A) that will consider in-train placement of rail freight cars transporting hazardous materials and improved documentation requirements for trains transporting hazardous materials. As soon as high priority rulemakings have been published in the Federal Register, FRA intends to resume the active pursuit of the issues in Docket HM-201A.

The issue of train make-up to control in-train forces presents complex issues that have been the subject of extensive research supported by FRA over two decades. The products of that research are used by the railroad industry to develop and implement guidelines for train make-up, and FRA intervenes to encourage more conservative train make-up practices where necessary. FRA has identified the issue of regulatory controls over train makeup as one for which a strong program development emphasis is warranted over the next several years. Given the present workload of rulemakings mandated by statute, the complexity of the train make-up issue, and available resources, FRA would not expect to begin a formal program development effort in this area until FY'95 at the earliest. However, research directly in support of this effort will commence in FY'94.

Questions Asked by Senator Exon and Answers Thereto by Dr. Rothberg

HAZMAT ENFORCEMENT

Question. In its report entitled, Hazardous Materials Shipment Information for Emergency Response, the National Academy of Sciences noted that because enforcement is not an emergency responder's primary concern at an incident, observed hazardous materials transportation (hazmat) violations often go unreported. How do these unreported hazmat violations affect the integrity of the hazmat enforcement structure? Has the U.S. Department of Transportation (DOT) implemented programs to improve communications between emergency responders and the hazmat enforcement community? What else could DOT do to close the communications gap between emergency responders and hazmat enforcement officers?

Answer. Emergency responders arriving at the scene of a hazmat incident sometimes come across violations of DOT's hazardous materials (hazmat) transportation safety regulations. For example, an emergency responder may discover that a driver does not have required shipping papers to accompany a placarded load, shipping papers are improperly completed, placards on the sides of vehicles are incorrect or missing, or labels and markings on packages and cylinders do not meet DOT specifications.

The National Academy of Sciences (NAS) in its report, Hazardous Materials Shipment Information for Emergency Response, noted that hazmat safety violations observed by emergency responders at an incident often go unreported because enforcement of the hazmat transportation safety regulations is not the primary concern of these personnel.[1] As discussed below, hazardous materials transportation safety would be promoted if the communications gap between the emergency response community and the enforcement community were narrowed.

If the emergency response community took greater advantage of the willingness and expertise of the enforcement officials to investigate allegations of noncompliance with the safety regulations, hazardous materials transportation safety would be promoted. This conclusion is based on the following considerations:

1. Emergency responders can play a major role in spotting examples of noncompliance and preserving this evidence for follow up by enforcement officers. When the emergency response community identifies possible noncompliance with the safety regulations and brings this information to the attention of the enforcement community, Federal and State enforcement officials can better focus their limited staff resources on hazardous materials carriers and shippers that may need additional monitoring.

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[1] Such violations as incomplete or incorrect information can impede the ability of emergency responders to conduct their public safety responsibilities and to protect themselves from hazardous situations. For example, considerable time may be wasted at a response scene because the materials involved are not easily identified due to the lack of placards or shipping papers.

2. To promote voluntary compliance with the safety regulations, it is important that all serious violations discovered by Federal and State personnel are dealt with on a timely and effective basis. Vigorous enforcement activities send the message that noncompliance will not be tolerated. Likewise, noncompliance that remains unaddressed only encourages further noncompliance.

Thus, it is important that alleged violations of the safety regulations are reported and that enforcement officers thoroughly investigate these leads. By ignoring observed violations of the safety regulations, the effectiveness of the hazmat safety enforcement structure is somewhat undermined.

Currently, DOT is providing some limited training and outreach projects to the emergency response community regarding the importance of hazardous materials transportation enforcement. For example, the Research and Special Programs Administration (RSPA) has issued a training film intended to encourage responders to preserve evidence of possible violations of hazmat regulations at an incident.

However, there is much more that senior DOT managers could do to improve communications with State and local government police and firefighters. For example, DOT, working with the Commercial Vehicle Safety Alliance, the Cooperative Hazardous Materials Enforcement Development Program, the National Association of Governors' Highway Safety Representatives, and various police and fire associations could implement a planned strategy that would ensure that alleged violations of the Hazardous Materials Transportation Regulations (HMTR) noted by emergency responders, are promptly investigated by appropriate Federal or State enforcement officers. This strategy would need to include information about the requirements of the hazardous materials communication regulations (which include markings, labels, placards, and shipping papers) and improved communications with the enforcement community. Specifically, the Office of Motor Carriers in the Federal Highway Administration (FHWA) and the Office of Safety in the Federal Railroad Administration (FRA) could foster improved communications with the emergency response community to solicit information on alleged violations of the HMTR. These Agencies could establish a more formalized system to improve communications with the emergency response community. Perhaps the 800 number of the National Response Center (or some other mechanism) could be used by emergency responders to report alleged violations of the HMTR. Telephonic reports could then be investigated by appropriate enforcement personnel.

Statutory language does not appear to be necessary to improve communications between the enforcement community and the emergency response community. In response to the NAS report, DOT agencies may seek to improve their communications with and training of the emergency response community. This process might be facilitated, however, by report language addressing the concerns expressed in the NAS report and encouraging further DOT outreach efforts. It would, however, be a major undertaking to contact the thousands, perhaps hundreds of thousands, of emergency response units in the United States.

TRUCK SAFETY ISSUES

Question. Dr. Rothberg, you have testified previously before the Committee on the issue of truck safety. Based upon your research in this area, what other measures which might improve truck safety generally, and thus hazmat safety, would you propose for the Committee's consideration?

Answer. There are numerous options that the Committee might consider to improve large truck safety. These options include:

A. ban the use of radar detectors in commercial motor vehicles;

B. require the installation of antilock brakes on all new commercial motor vehicles or require a performance standard that results in an equivalent level of safety;

C. require supporting documentation to be retained by motor carriers for at least six months so that safety inspectors could audit more closely the accuracy of log books, thus improving enforcement of hours of service regulations; and

D. provide additional information to motor carriers about the past employment record of driver applicants.

The following discussion focuses on options C and D, because both of these topics have not been widely discussed in the congressional literature. Options A and B are not considered because they have been discussed in detail elsewhere. The option of letting FHWA gradually improve its truck safety regulations without any new congressional directives for several years is discussed at the conclusion of this analysis.

Option C. Strengthening the Enforcement of Hours of Duty Status (Service) Relations

The literature contains numerous studies that show that driver fatigue is an important cause or contributing factor to accidents involving large trucks. One of the

major means of seeking to reduce the fatigue of the commercial driver is the hours of duty status (service) regulations which limit the amount of time that a driver can legally operate a commercial motor vehicle. Vigorous enforcement of hours of service rules would promote increased compliance with these critical safety regulations. As explained below, the current Federal regulatory system could be revised to facilitate more effective enforcement of hours of service regulations.

Section 395.8 (Paragraph K) of Title 49 of the Code of Federal Regulations requires records of duty status (driver logs) to be retained at the principal place of business of a motor carrier for at least six months. Although this regulation requires supporting documents to be retained along with driver logs, the term "supporting document" is not defined in the regulatory code. The regulations do not detail which supporting documents must be retained, nor do the regulations detail the information that must be specified on a supporting document. For example, the regulations do not require the name of a driver to be on a specific supporting document. Thus, under FHWA's regulations, a motor carrier who wants to evade possible enforcement actions for violations of the regulations pertaining to hours of service rules might claim compliance with the current FHWA requirement of retaining "supporting documents" by handing a Federal (or State) safety inspector a batch of documents that do not specify the exact trips, drivers, or power unit number of the vehicles involved. This strategy, which has been used by a variety of motor carriers, creates a maze of obfuscation and complicates the enforcement of hours of service regulations.[2] For those who support strong enforcement efforts, this situation is far from ideal. This is especially true when it is recognized that some motor carriers will falsify records of duty status to conceal hours of service violations. This can be accomplished in numerous ways. For example, some motor carriers may deny the existence of supporting documents requested by inspectors. Some motor carriers may remove all means of tying a particular supporting document to a record of duty status. Similarly, some employers remove a driver's name or vehicle number from various receipts or shipping papers.

To deal with this situation, the Committee might consider a provision which would make it easier for Federal or State motor carrier safety inspectors to document falsification of log books. Such a provision would require the Secretary of Transportation to amend section 395.8(k) of the Federal Motor Carrier Safety Regulations to require supporting documents to: (1) be retained for a minimum of six months from the date of receipt, and (2) include information identifying driver and vehicle with each supporting document. Supporting documents might include but are not limited to: trip reports, pay slips, bills of lading or shipping papers and receipts for fuels, lodging and various tolls. A supporting document would be defined as: any document or record that is generated in the normal course of business that could be used by a safety inspector to verify the accuracy of a log book entry.

The major problem with this provision is that it would impose additional paperwork burdens and associated costs on industry. Many of these documents are retained for other business purposes.

Option D. Ensuring Adequate Information about Driver Candidates

Section 391.23(2) of Title 49 of the Code of Federal Regulations requires motor carriers (employers) to make an "investigation of the driver's employment record during the preceding 3 years." The nature of this required investigation is rather vague. The regulation does not require the motor carrier hiring a driver to seek specific information on the crash record or accident involvement of the prospective employee, past results of drug and alcohol tests, or other safety-related information. From a safety perspective, the other shortcoming of the current regulation is that it does not require the former motor carrier to respond to the inquiry made by the new motor carrier.

Thus, the value of this regulation for promoting safety and, more specifically, its usefulness to a motor carrier hiring a driver is frequently of little or no value. This is especially true when the previous motor carrier refuses to supply any relevant information to the hiring motor carrier. An example of how the Section 391.23 regulation when combined with other regulations could lead to safety problems is presented below.

Under the current Federal regulatory scheme specified in the Section 391.23, drug testing, and driver qualification requirements, a truck driver that was recently fired from one company for testing positive for drugs as evidenced by a random drug test can gain employment with another truck company almost immediately. The fired driver, who was thought by the hiring (new) motor carrier to be otherwise qualified to operate a truck, could be hired after testing negative for drugs on the pre-employ-

[2] Based on numerous discussions with various DOT enforcement officers, 1993.

ment drug test.[3] The newly hired driver may continue to have a serious drug problem, but this would not necessarily come to the attention of the hiring motor carrier. The former motor carrier (employee) may decide not to supply any relevant information on this issue.

FHWA or the Congress might consider either eliminating the Section 391.23 regulation or changing it in a manner that would make it useful to the hiring motor carrier, but not unduly burdensome on the former motor carrier.

To reduce the possibility that a motor carrier unknowingly hires drivers who pose a major risk to the public and a financial risk to their company, the Secretary of Transportation could be required to amend section 391.23(2)(c) of the Federal Motor Carrier Safety regulations to specify the scope and nature of the information that must be sought by the new motor carrier regarding a commercial driver applicant. Such information could include records of crashes/accidents involving a driver, the results of past drug and alcohol tests and other saletyrelated information that the Secretary judges to be appropriate for the new motor carrier. The Secretary could require the former motor carrier (employer) of a driver applicant to supply such information within a thirty day period after the original inquiry by the new motor carrier. As a condition for employment in the motor carrier industry, the driver would likely have to be required to give the former motor carrier permission to release sensitive information, e.g., relevant drug testing information, to the new motor carrier. The Secretary could also allow the driver to review and comment on any records or information provided to the new motor carrier.

There are several difficulties that would need to be worked out through the rulemaking process to initiate the option outlined above. For example,

1. Many former employers are concerned about being sued for supplying information about former employees.
2. If a driver has been totally rehabilitated from a drug problem, should past drug testing results be conveyed to a new employee? How would rehabilitation be determined?
3. Adequate safeguards to protect the privacy of the information would need to be built into the regulation. For example, sensitive information might need to be transferred only from the safety director or medical review officer of one company to the safety director or medical review officer of another company, with appropriate penalties for the unauthorized release of information.
4. The protection provided under the Americans With Disabilities Act would need to be considered, especially as they apply to a person who has been rehabilitated from a drug problem. The challenges of writing a workable regulation would be considerable, but the Federal Railroad Administration has dealt with similar problems.

There is always the possibility that FHWA will address these policy issues as it revises its current drug testing regulations or during its comprehensive review of its regulations now underway.

GRADUAL CHANGE

There is also the argument of letting FHWA gradually revise the Federal truck safety regulations without the imposition of additional congressional requirements for several years. FHWA already faces a large backlog of regulatory actions pertaining to truck safety. Primarily as a result of past congressional actions, there are approximately 35 proposed regulations or required studies relevant to motor carrier safety awaiting final completion by the Secretary of Transportation. Rulemakings or reports are due in many critical safety areas, including vehicle length/weight restrictions, violation of out-of-service orders, hazardous materials transportation safety permits, and expanded drug and alcohol testing requirements. In fact, particularly during the last two years, the Secretary has failed to meet many deadlines for final regulatory action pertaining to truck safety initiatives that were set in statute.

Thus, if Congress enacted no additional rulemaking requirements for several years regarding truck safety, the U.S. DOT would still have several years worth of work pending to complete past congressional requirements and other pending regulatory initiatives.

If we can be of further assistance, please do not hesitate to call.

[3] This test must be ordered by the hiring motor carrier.

Questions Asked by Senator Exon and Answers Thereto by Mr. Collins

DRIVER TRAINING

Question. In his testimony, Mr. Skelton of the International Brotherhood of Teamsters asserted that, notwithstanding the new rules for training hazardous materials transportation (hazmat) drivers, the level of training provided is insufficient and that all permanent and casual employees engaged in the loading, unloading, handling, storage, and transportation of hazardous materials will not be trained as required by the time these rules take effect in two months. What is the ATA's response to this assertion, and how are the carriers meeting their obligation to provide appropriate training?

Answer. Prior to hearings on the Reauthorization of the Hazardous Materials Transportation Act, ATA surveyed several of its largest union and non-union motor carrier members regarding their training policies for hazmat employees. All carriers surveyed acknowledged that they are in the process of providing the required training, but further stated that they will be finished mandatory initial training prior to the October 1st deadline.

Training is provided to different employees in different ways by the various carriers. For example, regardless of employee status (i.e.: part time or full time), all but one carrier stated that they put require all new hires to go through their full orientation program. Drivers especially are targeted for complete training because of the unsupervised nature of their job. In many cases companies provide free training to union driver pools so that drivers are trained and readily available when the motor carrier needs to hire part time or casual drivers. This gives the motor carrier a ready source of drivers familiar with both regulations and company policies.

For employees other than drivers, some motor carriers stated that they opt to take advantage of the 90 day period given to train newly hired employees before putting them through extensive training. This allows the motor carrier to assess performance and determine whether or not the new hire will become a permanent employee. During the course or the 90 days, the new hire will complete basic orientation training and then work under the supervision of someone who has been trained in the job they are to perform. If the new hire passes the probation period, then the new hire will be required to attend further training.

ATA believes that Mr. Skelton's assertion that the level of training is insufficient and that employees will not be trained as required by October 1, 1993 is unsubstantiated.

RETENTION OF SHIPPING PAPERS

Question. In his testimony, Dr. Paul Rothberg of the Congressional Research Service recommended that additional federal requirements mandating the retention by shippers or carriers of shipping papers be imposed in order to facilitate the ability of the law enforcement community to document violations of the hazmat safety regulations. Please provide the committee with ATA's views on this recommendation.

Answer. ATA feels that there is no need for further regulations for for-hire motor carriers in this area. For-hire motor carriers already are required by the Interstate commerce Commission (ICC) to retain Bills of Ladin and other shipping documents for a period of 1 year [49 CFR Part 1220: Preservation of Records]. Moreover, standard business practices are to retain records as long as a statute of limitations could require production of the document. For example, the Internal Revenue Service's statute of limitation for checking on income tax returns is 7 years. Therefore, it is a standard practice that certain records that could substantiate revenues be retained for a period of, at least, 7 years.

ATA is unaware of any requirements for retention of shipping documents for shippers and private motor carriers of hazardous materials, exclusive of hazardous wastes. Hazardous Waste transporters are required to retain a copy of the Hazardous Waste Manifest (EPA Form 8700-22 and 22A) for a period of 3 years after delivery of the waste to the disposal site [40 CFR Part 263; § 263.22]. There are similar requirement for waste generators and disposal facilities to retain records in 40 CFR.

Therefore, ATA feels that, if there is a need for additional federal requirements regarding the retention of shipping papers, those requirements should be directed towards shippers and private motor carriers of hazardous materials and not to for-hire motor carriers.

SHIPPER HAZMAT RATINGS

Question. In addition, Dr. Rothberg suggested in his testimony that DOT should develop, test, and implement a system to inform concerned parties on the safety per-

formance and/or regulatory compliance of hazmat shippers. What is ATA's response to this proposal?

Answer. ATA feels that shippers should be held more accountable for their actions than they are at this time. It is shippers who are responsible for making sure that hazardous materials shipments are properly prepared prior to offering them for transportation.

Motor carriers act upon the assumption that shippers have properly performed all tasks associated with the classification, packaging, marking, labeling, and identification of hazardous materials. However, In many cases, small shippers and reformulators (shippers who buy products and then blend them to create new products) either are not aware of the regulations or elect to ignore them. It is these shippers who cause the most problems for motor carriers and emergency responders. By providing false information, materials which are not properly packaged or identified, or shipping papers with improper or incomplete descriptions, these shippers are jeopardizing the safety of drivers, dockworkers, and emergency responders.

ATA believes that a system to identify shippers as either satisfactory, conditional, or unsatisfactory, in much the same manner as motor carriers are rated, would be a useful tool. Not only could motor carriers utilize this system to ensure to-hat shippers with which they are conducting business are in compliance with the regulations, it would be invaluable to the enforcement community as a way to address violations of the hazardous materials regulations at their source.

PLACARD AND MANIFEST SYSTEM

Question. In his statement, Mr. Frederick H. Nesbitt of the International Association of Fire Fighters asserted that the current placard and manifest system for hazmat shipments is ineffective and should be replaced. For the record, what is ATA's response to this assertion?

Answer. ATA does not agree with Mr. Nesbitt's assertion that the current placarding and manifesting system is ineffective and should be replaced. In our comments to the Research and Special Programs Administration (RSPA) in their regulatory docket HM-206: Improvements to the Hazardous Materials Identification System, we concluded:

1. ATA is opposed to drastic change in the placarding system. Placards must be treated as part of the total hazardous materials communication, and not as the only piece of information afforded emergency responders in the event or an accident or incident.
2. RSPA should develop a POISON INHALATION HAZARD placard to replace the system now used to identify these materials.
3. Use of the DANGEROUS placard should remain a permitted exception for Table II hazardous materials.
4. The 1,000 pound exception for placarding Table II hazardous materials should remain in effect.
5. An electronic data communication system for the identification of hazardous materials on a transport vehicle in real-time should not be created. This proposal would be extremely costly to both industry and government with no apparent benefit to safety. In fact, a system as proposed could actually be a detriment to the safety of emergency responders due to the significant amount or error that could occur in the data entry.
6. There is no need to impose a regulation which would require motor carriers to provide a 24-hour emergency response telephone lumber. Emergency response information already is available to responders. This information includes product information and response actions and a telephone number of the manufacturer of the product or their agent. Motor carriers could not provide any further pertinent information to aid responders in the mitigation of an incident.

A complete copy of ATA's comments to HM-206 is provided for the Committee's files.

ATA wishes to thank the Committee for giving us the opportunity to express our opinion on these very important topics. Should you have any questions regarding these comments, please call.

[ATA's comments on HM–206 may be found in the committee's files.]

QUESTIONS ASKED BY SENATOR EXON AND ANSWERS THERETO BY MR. SKELTON

Question. Tracking of Hazmat

Answer. The IBT believes that information failures cited in the NAS report could be addressed through: A) Changes in regulations. Many times information is insufficient at an incident because the material/shipment was excepted as a small quantity or simply not listed on the Hazardous Material Table (HMT)—thus exempted. We support the extension of regulation on all quantities of hazmat (i.e. limited quantities and consumer commodities). We would also support the extension of the Hazardous Materials Table to include additional materials that are dangerous, but not classed in the DOT system. An instructional example is the recent chemical spill that hospitalized 5 people who were overcome from a drum of Cyclic Amine that leaked while in transport. The product contained an aromatic solvent, which was <8 percent napthalene. The Research and Special Programs Office at DOT indicated the material was not on the HMT, and therefore the incident not even reportable. Meanwhile, the manufacturer of the spilled product lists chemical goggles, protective clothing and respiratory protection on their Material Safety Data Sheet for handling this material.

B) More Effective Enforcement of Existing Standards. When placards and shipping papers are missing or inaccurate, then a shipper or carrier should be brought to task on the letter of existing law. Teamster driver's continuously ask the question of why they are cited over the road for inaccurate shipping paper entries or missing placards. The FHWA response is that they do not have the time to drive to the company headquarters to present the citation. If a driver is presented with a shipping paper that inaccurately represents the shipment, there is no way for that person to know what is inside containers on a load. Many shippers do not offer placards to drivers when the shipping papers indicate placarded amounts of hazmat. Union drivers can file a grievance if reprimanded for following the law by an employer. What do other driver's do? The FHWA and RSPA need to increase their enforcement staff and coordinate the follow up of hazmat citations so that shippers and carriers be cited for hazmat violations directly.

C) Improved Training. When vehicle operators are unable to provide information to responders at an incident, then training is key. The HM126F training now required by RSPA sets up a framework to train handlers and drivers in hazmat, yet the lack of criteria for that training is problematic. Established hours of training need to be set, and at a minimum, a facilitator present to field questions and present materials. A common mode of HM126F training is for drivers to watch a video in a dark room and take a quiz—with no verbal interaction from any informed person.

Question. Placard and Manifest System

Answer. The IBT fully concurs that an automated identification system that replaces the placard and manifest system should be thoroughly tested and phased-in. We believe that some sort of physical indicator should be present on the outside of a trailer, such as a the current placard system (which is established internationally) so that hazmat is indicated—but that a placard is not the primary way for a responder to get information on the hazmat contents of the trailer.

Question. Retention of Shipping Papers

Answer. Requiring shipping papers to be retained for a year is critical for hazmat enforcement follow up. A good example is with regards to hazmat that is shipped as a limited quantity. In this instance, the regulations require a shipping paper entry, but no marking or label on the shipment. When there is a spill, the only document to indicate there is hazmat present—is the shipping paper. We have had numerous accounts of this on docks, where materials could not be identified by the container, and shipping papers were not accessible, and then gone from the premises. When our members have attempted to report that the damaged shipment was then transported, they have no back up that the shipment even existed.

There are currently requirements to maintain Uniform Hazardous Waste Manifests (the shipping paper for hauling hazardous waste) for three years. Also, the FHWA is currently proposing that motor carriers transporting an intermodal container or trailer maintain a copy of the certification which indicates contents and weight for one year (FHWA Docket No. MC-93-1). Retention of records is not new to the transportation industry.

Question. Shipper Hazmat Ratings

Answer. The IBT supports the development, testing and implementation of a system to inform concerned parties on the safety performance and/or regulatory compliance of hazmat shippers. As suggested earlier, the FHWA and RSPA need to document and follow up on hazmat violations more effectively. A current proposed rulemaking by the FHWA would require safety permits for carriers moving high risk hazmat. This permit can only be obtained if a carrier has a satisfactory safety record per Federal Motor Carrier Regulations. The IBT has commented on this rulemaking, proposing it be extended to all hazmat carriers for any amount of hazmat.

This would at least establish a record connecting vehicle and driver safety patterns to hazmat transportation. If hazmat shippers were repeatedly not in compliance with the safety or hazmat regulations, then hazmat permits should be pulled. Furthermore, as Dr. Rothberg suggests, if insurance companies are alerted to these violations, they might demand improvements by shippers and carriers before reissuing policies.

QUESTIONS ASKED BY SENATOR EXON AND ANSWERS THERETO BY MR. EMMETT

Base-State Hazmat Registration

Question. In your written statement on behalf of the National Industrial Transportation League (NITL), you presented the concept of a base-state hazardous materials transportation (hazmat) registration program. Please tell the Committee how NITL would envision such a program working and why NITL believes it is important.

Answer. As was stated in our testimony, Congress has mandated the adoption of similar base-state programs. The Intermodal Surface Transportation Efficiency Act mandates the adoption of the International Registration Plan, the International Fuel Tax Agreement, and the single-state registration of motor carrier insurance. The purpose of each of these programs is to provide a balance between the needs of the states and promote safety while minimizing the impact on interstate commerce.

A base-state hazmat registration program can be implemented under the existing International Registration Plan (IRP). The IRP is a registration reciprocity agreement among states of the United States and provinces of Canada (if NAFTA is finalized this program could include Mexico). The agreement provides for payment of license fees on the basis of fleet miles operated in various jurisdictions.

The unique feature of this plan is that even though license fees are paid (by the base state) to the various jurisdictions in which fleet vehicles are operated, only one cab card is issued for each fleet vehicle when registered under the plan.

The IRP could incorporate hazardous materials registration with minor adaptation since:

(1) the IRP program is already established to collect fees and apportion them to operating jurisdictions based upon the percentage of fleet miles travelled in each jurisdiction;

(2) all states are required to participate in the IRP program by 1996;

(3) under this proposal all states would be required to set their annual hazardous materials fees and agree to a uniform carrier registration form;

(4) the base-state would collect the annual fee and issue an International Hazardous Materials Registration Cab Card (IHMR) indicating the states in which the carrier is authorized to operate. Attachment A is a copy of an IRP Cab Card. This is a computer generated form. The IHMR form would be identical with the exception of the form heading.

Shippers, carriers, and state officials have been working for over two years now through the Alliance for Uniform HazMat Transportation Procedures (the Alliance). The Alliance adopted general provisions of a base state registration program under HMTUSA Section 22 that utilized the IRP. A copy of the proposed Uniform State Program is contained in Attachment B. By setting a deadline by which states must adopt the Uniform State Program, Congress would again be promoting safety in an efficient manner. Adoption would encourage the states to continue to work with industry and the federal government to improve safety and lower cost.

RETENTION OF SHIPPING PAPERS

Question. In his testimony, Dr. Paul Rothberg of the Congressional Research Service recommended that additional federal requirements mandating the retention by shippers or carriers of shipping papers be imposed in order to facilitate the ability of the enforcement community to document violations of the hazmat safety regulations. Please provide the Committee with NITL's view of this recommendation.

Answer. The League believes that the enforcement community should have access to shipping papers for a reasonable period of time to audit shipments and resolve safety issues and legal enforcement actions. Care must be taken, however, to avoid imposition of unnecessary, conflicting, or duplicative record-keeping requirements.

Additional requirements mandating the retention by shippers or carriers of shipping documents relating to the 500,000 hazmat shipments per day in the U.S. in order to facilitate the ability of the enforcement community to document violations of the hazmat safety regulations pose two concerns to shippers.

(1) The effort, time, and expense expended on new paper work may take resources away from timely and more effective enforcement of hazmat safety regulations.

(2) Currently, many governmental agencies have requirements regarding shipper and carrier record retention. For example, copies of customer invoices (with shipping papers) are retained for the current year, plus five past years; tripsheets are retained for seven years for fuel tax audit purposes; and payroll records are retained for seven years. These retention periods are mandated by the Internal Revenue Service or various state governmental agencies.

Neither shippers nor carriers should be burdened with additional records retention. Instead, in the best interest of public safety, enforcement efforts should be improved to accomplish a timely and effective national hazardous materials transportation safety program.

Prior to any legislative action, a study of state and federal records retention could determine if existing requirements already provide the documentation necessary.

RAILROAD TANK CARS

Question. At the hearing, the Committee heard testimony on safety issues related to various types of railroad tank cars. Please provide the perspective of the shipping community, as appropriate, on these safety issues.

Answer. The National Industrial Transportation League has not been directly involved in the tank car issue. A number of our members, however, have worked through the Chemical Manufacturers Association with the Association of American Railroads to develop new tank car enhancements for certain commodities. As we understand the process, the two groups have reached an agreement on a new car design. We support this type of self regulation. The parties involved are those that are directly responsible for the safe transportation of hazardous commodities, and bear the costs associated with that responsibility.

In addition, the Federal Railroad Administration is looking at the issue of tank car enhancement through HM 175. The League would recommend allowing the current regulatory process to work before adding new Congressional mandates.

Form 442008
9-92 H-1233

INTERNATIONAL REGISTRATION PLAN APPORTIONED CAB CARD

VEHICLE DESCRIBED HEREIN HAS BEEN PROPORTIONALLY REGISTERED BETWEEN THE STATE OF IOWA B019001 AND OTHER JURISDICTIONS SHOWN BELOW

PLATE NO. PH1897
EXPIRES 12/31/93

I am aware of all applicable federal and state commercial vehicle safety regulations.

OWNER: FARM CREDIT LEASING SERVICES					VISTA NO. 00494	
UNIT NO. 7056	YEAR 81	MAKE INTL	TYPE TT	VEHICLE IDENTIFICATION 1HTD212778GB14377		
CARRIER NO. 420615016	FLT. NO. 001	TITLE NO. 71W024199		DATE ISSUED 04/08/93		
RUS D	SUPP. NO 007	AX/ST 2	PERCENT 44.606	UNLADEN WT. 15400	G.V.W.	COMBINE G.V.W. 80000
OPERATOR: AG PROCESSING INC						
ADDRESS: 205 WEST PARK						
CITY: SHELDON				ST. IA	ZIP CODE 50201	

AR	080000	AZ	080000	CA	QUAL
CO	080000	CT	080000	IL	080000
IN	080000	KS	080000	LA	080000
MI	080000	MN	081000	MO	080000
MS	080000	MT	080000	ND	080000
NE	080000	NM	080000	NV	080000
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Iowa Department of Transportation

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ENFORCEMENT DATE 03/14/94

[Attachment B, Section 4 of the Uniform State Program may be found in the committee's files.]

LETTER FROM LAWRENCE M. MANN, ATTORNEY, RAILWAY LABOR EXECUTIVES ASSOCIATION

AUGUST 24, 1993.

Honorable ERNEST F. HOLLINGS,
U.S. Senate,
Washington, DC 20510–6125

DEAR SENATOR HOLLINGS: This letter is in response to the questions by Senator Exon that you submitted to me subsequent to the reauthorization hearing on hazardous materials.

With regard to question No. 1, based on informal discussions with representatives from the FRA, RSPA and NTSB, it is rail labor's understanding that the upcoming proposed regulations in Docket No. HM 175A will not require head shields and thicker walls on class 111 tank cars. Rather, the rulemaking likely will prohibit a certain few products from being shipped in these tank cars. Based upon past history, we seriously question DOT's sensitivity to the environmental hazards posed by transporting many products in 111 tank cars.

RLEA's original testimony is not altered by the proposed rulemaking. Class 111 tank cars pose too great a hazard to the public and the environment. Therefore, again, RLEA urges Congress to mandate full head shields, thicker walls and shelf couplers on all class 111 tank cars.

Regarding questions 2 and 3, I am attaching correspondence from the Brotherhood of Maintenance of Way Employes and the United Transportation Union. Also, I am submitting a video tape of the clean up operations at the Seacliff, California incident on July 28, 1991, and a study by James E. Cone entitled "Health Effects of Occupational and Environmental Exposures: Hazardous Waste Incinerators and Pesticide Spills." The video clearly demonstrates rail workers without protective clothing working beside outside contractors having full protection at the clean up site. I hope these materials will be helpful to your committee in its deliberation on hazardous materials reauthorization.

Very truly yours,

LAWRENCE M. MANN,
Attorney, Railway Labor Executives Association.

[The information referred to above may be found in the committee's files.]

QUESTIONS ASKED BY SENATOR EXON AND ANSWERS THERETO BY MR. NESBITT

HAZMAT PLACARDS AND IDENTIFICATION

Question. In your testimony, you asserted that the current placard and manifest system for hazardous materials transportation (hazmat) shipments is ineffective and should be replaced. Please explain further why the International Association of Fire Fighters (IAFF) believes so strongly that this system "be relegated to the scrap pile as soon as practicable." A description of concrete examples of problems in this area would be helpful.

Answer. Allow me to clarify that when I suggested that placards be relegated to the scrape pile, I was referring to the placard system as the primary method of identifying hazardous cargo. The IAFF does not object to continued use of placards, and we even see some merit to using some sort of generic placard to warn of hazardous substances. What we find unacceptable is the reliance on placards as the primary source of information for emergency response purposes.

Nothing is more important to a fire fighter responding to a hazmat incident than accurate, timely information. Quite literally, the lives of emergency responders depend on instantaneous access to reliable information. The antiquated placard information system has numerous flaws which make it unacceptable in this age of sophisticated automated tracking systems.

The first problem is that placards are often missing or inaccessible. Placards can be destroyed or obscured by fire or collision, they can be dislodged, and they can simply be out of visual range following an accident. Additionally, placards are sometimes removed, either by vandals or by truck drivers who wish to use roads or tunnels that prohibit hazardous materials. (While the overwhelmingly majority of hazmat truck drivers operate safely and legally, a few have been known to succumb to the temptation of saving time and money by using prohibited routes).

The second problem is that placards provide incomplete information. Vehicles that are carrying mixed loads often only display a placard for one hazardous substance. Placards also fail to indicate the quantity of the hazardous materials. Knowing the presence and approximate quantity of each hazardous material on any vehicle is es-

sential for safe emergency response. The potential for volatile reactions—including explosions and toxic clouds—increases dramatically in the presence of mixed loads.

There are numerous examples of inaccurate and missing placards. I mention a few below in an effort to illustrate the types of problems we encounter.

- Recently three fire fighters in New York were diagnosed with Leukemia as a result of responding to an incident in 1991 involving an unknown substance that spilled when a tractor-trailer flipped over.
- In Los Angeles, a truck pulling two trailers overturned. The cargo from both trailers spilled and were on fire. One of the trailers was hauling rubber tires, and the blazing tires emitted a thick black smoke which made it impossible to detect the contents of the other trailer. Fire fighters had just begun to extinguish the blaze with water when someone discovered a container near the wreckage indicating the presence of Lannate L methomyl, an insecticide which creates a toxic gas when mixed with water. Nearly 100 people had to be treated for exposure to the toxic gas, and only a fortunate discovery prevented large numbers of deaths.
- In Fresno County, a truck roiled over on a heavily traveled highway. A fire made detection of placards impossible, and the driver was not knowledgeable about his load. Traffic was re-routed and the local government utilized more than $3,000 in resources over a period of several hour before finally identifying the cargo, which turned out to be harmless.

HAZMAT PILOT COMMUNICATIONS PROGRAM

Question. In his testimony at the hearing, Mr. Harper on behalf of the Association of American Railroads indicated that the Houston Cooperative Emergency Planning Project would be a good candidate for expansion into a pilot program for a hazmat communications link. What is IAFF's view of such a proposal, and does IAFF believe that such an expansion would be responsive to the recommendations by the National Academy of Sciences for a pilot program in this area?

Answer. We are not familiar with the particulars of the Houston Cooperative Emergency Planning Project, but we are skeptical about singling out any one system at this point, especially a railroad system. Circumstances vary significantly between transportation modes, and it is imperative that at least one pilot project be conducted on highways. Ideally, there should be a number of pilots being tested simultaneously so that comparisons can be made. In evaluating the Houston Project, we hope the Committee will consider whether it currently functions in a variety of conditions. For example, a tracking system that functions well in a rail yard is not necessarily capable of adequately tracking trains that travel at hundreds of miles per hour or through densely populated areas.

TRAINING

Question. In testimony at the hearing on behalf of IAFF, you cited the need for further federal support for training of emergency responders such as fire fighters. in addition to the training programs authorized by HMTUSA, what other federal and state programs provide for such training? Are such programs adequate?

Answer. Other than HMTUSA, there are no federal or state programs of any magnitude designed to train fire fighters to respond to hazardous materials incidents in transit, and there is very little training money nationwide for hazmat response of any kind.

Most significantly, as we stated in our testimony, the training funds authorized under HMTUSA have not been used for their intended purpose of training emergency responders. Instead the money has gone to train workers who handle hazardous materials, but are not charged with responding to emergency situations.

The absence of adequate training for hazmat emergency response is a serious issue with broad policy implications, not only for HMTUSA but for the Superfund program the Department of Energy's nuclear weapon program and other federal programs involving hazardous materials.

QUESTIONS ASKED BY SENATOR EXON AND ANSWERS THERETO BY MR. HARPER

HAZARDOUS MATERIALS FEES

Question. Since passage of HMTUSA, a number of states have enacted legislation imposing fees on railroads transporting hazardous materials. What is the position of the Association of American Railroads (AAR) with respect to these fees?

Answer. The railroad industry is opposed to state fees on the transportation of hazardous materials by rail. Railroads are uniquely exposed to onerous state and local transportation fees because of their fixed facilities. Railroads cannot pick up

and move track and other facilities should a state impose burdensome fees or regulations. Congress previously recognized that railroads are susceptible to unreasonable state taxes and therefore prohibited states from imposing discriminatory taxes (49 U.S.C. § 11503). Similarly, any government fees on rail transportation should be imposed at the national level.

RAIL TANK CAR SAFETY

Question. In testimony for the record, the National Transportation Safety Board (NTSB) cited its prior recommendation that the U.S. Department of Transportation (DOT) require head-end protection for additional products carried in tank cars, compel the installation of full-head shield protection rather than half-head shields, eliminate open-ended grandfather provisions which allow tank cars that fail to meet improved safety requirements to be used indefinitely, and require that fittings and valves on tank cars be designed or protected so they perform better during accidents. What is AAR's response to the NTSB's recommendations in this area?

Answer. AAR shares many of NTSB's concerns. AAR has asked DOT to require that new tank cars be equipped with full, not half, head shields, where head shields are required. AAR also has asked DOT to require head shields for certain commodities for which there is no head shield requirement, namely methyl bromide, ethylene oxide, and flammable gases transported in tank cars with capacities of 18,500 gallons or less. AAR requires protection for bottom outlets while DOT does not. AAR also recently supplemented DOT's requirements for top fittings protection with specific design requirements.

AAR is concerned about NTSB's statement concerning grandfather clauses. "Open-ended" grandfather provisions are necessary in many circumstances because of the impracticality of applying new regulations to existing tank cars. For example, minor changes in specifications for steel used to construct tank cars cannot be applied to existing tank cars conforming to older steel specifications. Pstrictions on the use of grandfather clauses could have a chilling effect on innovation in tank car design and construction.

Question. For the record, please respond to testimony by Mr. Larry Mann on behalf of the Railway Labor Executives' Association (RLEA), regarding type III tank cars specifically and rail tank car safety generally.

Answer. AAR strongly disagrees with Mr. Mann's testimony concerning tank car safety. Mr. Mann characterizes the DOT-III tank car as "unsafe." His principal complaint about these cars is that the cars lack some of the features present on "pressure" cars.

The appropriate tank car for a particular commodity depends on the characteristics of the commodity. DOT has over forty tank car specifications for the transportation of hazardous materials, and AAR has additional specifications for the transportation of hazardous and non-hazardous commodities. The DOT-III tank car is not suitable for high hazard commodities, but is a proper car for lesser hazardous materials that do not need the unique features found on pressure cars. Where appropriate, AAR has asked DOT to require pressure tank cars for the transportation of particular commodities. For example, AAR recently urged DOT to prohibit the transportation of methyl bromide in DOT-III tank cars.

Mr. Mann's assertion that industry will not make safety improvements unless required to do so by DOT is contradicted by the record. Earlier this month, AAR, the Chemical Manufacturers Association, and the Railway Progress Institute announced a voluntary agreement providing for the use of pressure cars to transport ten halogenated hydrocarbons that, if released, could have a substantial environmental impact. AAR's own tank car standards are more restrictive than DOT's hazardous materials regulations. For example:

- AAR requires the use of higher-quality steels for the fabrication of pressure car and non-pressure car tanks;
- AAR prohibits the transportation of carbon tetrachloride, chloroform, ethylene dichloride, methylene chloride or propylene dichloride in aluminum tank car tanks (DOT authorizes such tanks);
- AAR requires that a protective coating be applied to tanks and jackets of cars with foamed-in-place insulation (DOT authorizes uncoated tanks and jackets); and
- AAR requires bottom fittings protection on all new tank cars and on most existing tank cars used for the transportation of hazardous materials (DOT has no requirements for bottom fittings protection).

Mr. Mann unwarrantedly takes the government to task for delegating to AAR's Tank Car Committee certain responsibilities. The delegated authority concerns a ministerial function. the time-consuming task of checking tank car drawings and other technical documentation to ensure that tank car designs comport with DOT

requirements. AAR does not exercise any rulemaking authority on behalf of DOT. Furthermore, representatives of DOT, the National Transportation safety Board, and DOT's Canadian counterpart Transport Canada, attend Tank Car Committee meetings.

NATIONAL ACADEMY OF SCIENCES STUDY

Question. The AAR has indicated that the Houston cooperative Emergency Planning Project would be a good candidate for expansion into a pilot program for a hazardous materials transportation (hazmat) communications link. Please tell the Committee more about this program. Absent a federal initiative, can Congress expect the railroads to make their own computerized shipping manifests and records available directly to emergency responders?

Answer. The Houston Cooperative Emergency Planning Project is jointly sponsored by the Houston Port Terminal Railroad Association (PTRA) and the Federal Railroad Administration. The Project's objective is improve emergency responses to hazardous materials incidents. The Project is supported by local fire and police departments, chemical companies, and the railroads operating in the Houston area. The Project participants have identified the following areas for study: communication between government emergency responders and railroads, including computer/data links; guidance on appropriate initial responses to hazardous materials incidents; and training of emergency responders.

A link providing the Harris County Sheriff with access to computerized hazardous materials information for shipments on the PTRA and the Houston Belt Terminal and Railway currently is being tested. Under this system, the Sheriff will be able to retrieve information by entering tank car numbers in a computer terminal.

As stated in my testimony, railroads make information on hazardous materials shipments available to emergency responders. Shipping manifests are carried on trains and are given to emergency responders. Emergency responders can call railroad personnel round-the-clock to obtain data. The Houston Project will be testing the concept of a direct computer link between railroads and emergency responders. If the concept proves feasible and beneficial, AAR expects that It would be adopted by other railroads.

RAIL GRADE-CROSSING SAFETY

Question. This Committee has focused extensively on improving safety at railroad grade crossings as a way to save lives. Recently, a tragic accident occurred in Florida, when a gasoline tank truck pulled into a crossing without being able to clear it entirely, and was run down by an approaching Amtrak train. Several people died in the ensuing explosion. What would be AAR's response to mandating that vehicles transporting hazardous materials not proceed into a rail crossing unless clearance is adequate on the other side? Are education efforts alone enough to change behavior?

Answer. Grade-crossing safety should not be addressed in the context of hazardous materials legislation because grade-crossing safety is important regardless of the presence of hazardous materials in a motor vehicle. A motor vehicle obstructing a crossing presents substantial danger, whether it contains hazardous materials or not.

While a motor vehicle should not proceed into a crossing unless there is adequate clearance on the other side, there is a question as to the enforceability of the suggested law. Whether or not such a law is enacted, it is essential that efforts continue to educate the public about the potential consequences of reckless driving at grade crossings, including driving into crossings without adequate clearance ahead. Driver education and public information programs such as Operation Lifesaver are indispensable tools in the fight to reduce grade crossing accidents.

CRS RECOMMENDATIONS

Question. Please provide AAR's view of proposals made at the hearing by Dr. Paul Rothberg of the Congressional Research Service which would: (1) increase hazmat safety by requiring certain shipping papers to be retained by shippers and carriers; and (2) require DOT to develop, test, and implement a system to inform concerned parties on the safety performance and/or regulatory compliance of hazmat shippers.

Answer. AAR does not understand how new record retention requirements would enhance hazardous materials safety. The Interstate Commerce Commission already requires carriers to retain revenue waybills for one year. For bulk shipments of hazardous materials, the revenue waybills contain the relevant hazardous materials information.

AAR is unaware of any safety benefits that would result from DOT tracking the safety performance of hazardous materials shippers. In addition, it probably is impossible to design a practical system for tracking the myriad shippers of hazardous materials.

RAIL LABOR CONCERNS

Question. In addition to raising a number of issues related to rail tank car safety, Mr. Mann also testified regarding several other areas of concern related to hazmat safety. Please respond specifically to the issues identified regarding the potential for workers' exposure to hazardous materials during cleanup operations, as well as to the other areas of concern raised by RLEA at the hearing.

Answer. Contrary to the implication in Mr. Mann's testimony, railroads use only hazardous materials experts for cleaning up hazardous materials released in an accident. Railroads give appropriate training to engine crews on what to do should an accident occur, e.g., cooperate with emergency responders. Neither members of the crew nor maintenance-of-way employees are supposed to be cleaning up released hazardous materials.

Mr. Mann's allegations concerning silicosis are without foundation. Norfolk Southern reported to the Department of Health and Human Services, in a letter dated June 28, that a study of over 300 maintenance-of-way employees showed no cases of silicosis.

Mr. Mann's suggestion that there should be a prohibition on the location of placarded tank cars at the end of trains neglects the hazards from the increased switching of placarded cars that would be necessary to ensure tank cars were in the middle of a train. While the increased risk associated with additional switching would be small, the chance of a rear-end collision involving a tank car is also small. Mr. Mann has not shown that safety would be enhanced in a meaningful way by emphasizing the hazard from rear-end collisions at the expense of the hazard from increased switching.

Mr. Mann errs in suggesting that train crews are inspecting tank cars when unqualified to do so. Trainmen, in addition to receiving training on train operations, are instructed and tested on performing train inspections in accordance with ERA's requirements.

The railroads pay chose attention to train makeup. Mr. Mann cites the Dunsmuir, California, accident as an example of train makeup not being addressed by the industry. In fact, after that derailment Southern Pacific revised its train makeup rules systemwide. The Southern Pacific also has underway the development of an advanced computer program for calculating proper rail car placement that could be applied each time a train is made up.

Mr. Mann's attack on the transportation of hazardous materials by rail was irresponsible. The facts do not support his allegations. Nor do the safety statistics cited in my testimony, which show that the railroads are transporting hazardous materials safely.

QUESTIONS ASKED BY SENATOR HOLLINGS AND ANSWERS THERETO BY MS. MCMURRAY

IMPLEMENTATION OF HMTUSA

Question. Please provide the committee with the current status (completed or pending) of each of the rulemaking proceedings or other regulatory actions which HMTUSA requires the Department of Transportation (DOT) to undertake. Where such actions remain pending, please provide an estimated date of expected completion.

Answer.

STATUS OF THE DEPARTMENT OF TRANSPORTATION'S IMPLEMENTATION OF THE HAZARDOUS MATERIALS TRANSPORTATION UNIFORM SAFETY ACT OF 1990

SEC. 4 FEDERAL REGULATIONS GOVERNING TRANSPORTATION OF HAZARDOUS MATERIALS

(1) Regulations

Requirements. The law requires the Secretary to issue regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce.

Status. On July 9, 1993, RSPA published a Notice of Proposed Rulemaking (NPRM) (HM-200) to propose extending the applicability of the Hazardous Mate-

rials Regulations to cover all intrastate transportation of hazardous materials in commerce.

(2) Preemption of Covered Subjects

Requirements. Nonfederal regulations on certain covered subjects are preempted unless they are substantively the same as the Federal requirements.

Status. Final rules on preempt ion standards and procedures were published on February 28, 1991 (HM-207), and May 13, 1992 (HM-207A).

(3) Highway Routing

Requirements. The law requires the Secretary to issue Federal standards, established in conjunction with the States, to be used by the States and Indian tribes in establishing, maintaining, and enforcing: (a) specific highway routes over which hazardous materials may or may not be transported by motor vehicles, and (b) limitations and requirements with respect to highway routing.

Status. The Federal Highway Administration (FHWA) developed and published an NPRM (MC-92-6) on August 31, 1992, and conducted a series of public hearings during October 1992. FHWA is preparing a final rule. Also, an Interim Final Rule (MC-92-96) was published on September 24, 1992, establishing an FHWA regulation, consistent with previous RSPA regulations, for highway routing of radioactive materials shipments.

SEC. 5 REPRESENTATION AND TAMPERING—REGULATIONS

Requirements. The law prohibits persons, by marking or otherwise, from representing that a container or package for the transportation of hazardous materials is safe, certified, or in compliance with the requirements in Title 49, Code of Federal Regulations (CFR) unless it meets the requirements of all applicable regulations; or that a hazardous material is present in a package, container, motor vehicle, rail freight car, aircraft, or vessel, if it is not. The law also prohibits unlawful tampering with any marking, labeling, placarding or description on required documents or packages, containers, rail freight cars, aircraft, vessels or motor vehicles.

Status. On February 28, 1991, RSPA published a Final Rule (HM-207) prohibiting unlawful representation and unlawful tampering.

SEC. 6 MAINTENANCE AND DISCLOSURE OF SHIPPING PAPERS—REGULATIONS

Requirements. The law requires the Secretary to issue regulations specifying what information must be contained in shipping papers, where shipping papers are to be maintained during transportation of hazardous materials, and under what circumstances shipping papers shall be disclosed to appropriate emergency response authorities.

Status. The Hazardous Materials Regulations specify how shipping papers are to be maintained and located for all modes.

SEC. 7 TRAINING FOR HAZARDOUS MATERIALS TRANSPORTATION EMPLOYEES—REGULATIONS

Requirements. The law requires the Secretary to issue regulations to establish requirements for training to be given by all hazardous materials employers to their employees regarding: 1) the safe loading, unloading, handling, storing, and transportation of hazardous materials, and 2) emergency preparedness for responding to accidents or incidents involving the transportation of hazardous materials.

Status. A Final Rule establishing training requirements for all persons involved in the transportation of hazardous materials (HM-126F) was published on May 15, 1992. The rule requires hazmat employers to have begun training their employees no later than November 15, 1992, and complete training and employee testing by October 1, 1993.

SEC. 8 HAZARDOUS MATERIALS TRANSPORTATION REGISTRATION; MOTOR CARRIER SAFETY PERMITS

(1) Registration of Shippers and Carriers—Regulations

Requirements. The law requires persons who transport or cause to be transported certain hazardous materials to file a registration statement with the Secretary and pay an annual fee to fund an emergency preparedness program. The law requires registration filing by March 31, 1992, but the Secretary may extend that deadline to September 30, 1992.

Status. On October 10, 1991, an NPRM was published in the Federal Register. Three hearings were held and over 160 comments were received. Comments were considered and a Final Rule (HM-208) was issued on July 9, 1992. Clarification and

formal interpretations were published on July 28, 1992, August 21, 1992, and October 28, 1992. Simultaneously, RSPA mounted a massive public awareness and outreach program. The rule requires certain shippers and carriers to register and pay a $300 fee. The statutory deadline for implementing the program was met. Over 26,000 shippers and carriers have registered. The second year cycle of registration began in April 1993, with the mailing of renewal forms and over 21,500 shippers and carriers have registered. Registrants were required to register and pay the fee by July 1, 1993.

(2) Permitting Regulations

Requirements. The law requires the Secretary to develop and publish regulations for the issuance and revocation of motor carrier safety permits, including application procedures and terms and conditions of permits. All hazardous materials motor carriers transporting Class A or B explosives, liquefied natural gas, hazardous materials designated as extremely toxic by inhalation, or highway route controlled quantity radioactive materials must be issued a permit prior to transportation of those hazardous materials.

Status. FHWA published an NPRM (MC-92-4) on June 17, 1993, and the comment period closed on August 16, 1993.

SEC. 12 PENALTIES

Requirements. The Hazardous Materials Transportation Uniform Safety Act (HMTUSA) provides for the assessment of civil penalties for violations of "orders" issued by the Secretary; increases the maximum civil penalty that may be assessed from $10,000 to $25,000 and establishes a minimum civil penalty of $250; defines "acting knowingly" for purposes of assessing civil penalties for violations; and provides criminal penalties for knowingly violating 49 U.S.C. 1804(f) or for willfully violating a provision of the Hazardous Materials Transportation Act (HMTA), or an order or regulation issued under the HMTA.

Status. RSPA published a Final Rule (HM-207) implementing these provisions on February 28, 1991.

SEC. 13 RELATIONSHIP TO OTHER LAWS, DETERMINATION OF PREEMPTIONAND WAIVER OF PREEMPTION—REGULATIONS

Requirements. The law establishes Federal preempt ion standards and provides for administrative determinations of preempt ion and waivers of preemption by the Secretary. The law also prohibits States from levying any fee in connection with the transportation of hazardous materials that is not equitable and not used for purposes related to the transportation of hazardous materials, including enforcement and planning, development, and maintenance of a capability for emergency response.

Status. Final Rules (HM-207 and HM-207A) implementing these provisions were issued on February 28 1991, and May 13, 1992.

SEC. 15 TRANSPORTATION OF CERTAIN HIGHLY RADIOACTIVE MATERIALS

(1) Railroad Transportation Study (Dedicated Train Study)

Requirements. The law requires the Secretary, in consultation with the Department of Energy, the Nuclear Regulatory Commission, potentially affected States and Indian tribes, representatives of the railroad transportation industry and shippers of high-level radioactive waste and spent nuclear fuel, to study the comparative safety of using trains operated exclusively for transporting high-level waste and spent nuclear fuel with the safety of other methods of rail transportation, and report the results to Congress.

Status. Funding for this study was not included in the fiscal year (FY) 1991 Appropriations Act, but was included in the FY 1992 Appropriations Act. A study was initiated by the Federal Railroad Administration (FRA) with the Volpe National Transportation Systems Center (VNTSC) in FY 1992. A workshop was held in Denver on September 28-29, 1992, with the respective groups mentioned in the law, to discuss the issues. In addition, VNTSC has solicited comments from various groups to supplement the information from the workshop. A draft report has been prepared and is undergoing internal review. It is estimated that the final report should be submitted to Congress in December 1993.

(2) Safe Rail Transport of Certain Radioactive Materials

Requirements. The law requires the Secretary, taking into consideration the findings of the Railroad Transportation Study, to amend existing regulations, as appropriate, to provide for the safe transportation by rail of high-level radioactive waste

and spent nuclear fuel by various methods of rail transportation, including dedicated trains.

Status. Action required by this subsection is largely dependent upon the findings of the Railroad Transportation Study (Dedicated Train Study) which is currently ongoing. Reported above in Sec. 15 (1).

(3) Mode and Route Study

Requirements. The law requires the Secretary to undertake a study to determine which factors, if any, should be taken into consideration by shippers and carriers in order to select routes and modes which, in combination, would enhance overall public safety related to the transportation of high-level radioactive waste and spent nuclear fuel.

Status. The Secretary delegated the study to RSPA. The VNTSC awarded a study contract in January 1993. A draft report for public review and comment is anticipated by November 1993. The study will benefit from work being conducted under the FRA's Dedicated Train Study.

(4) Inspections of Vehicles Transporting Highway Route Controlled Quantities of Radioactive Materials

Requirements. The law requires the Secretary to develop regulations governing the mandatory inspection and certification of motor vehicles prior to each use of that motor vehicle to transport highway route controlled quantity radioactive materials. Training materials must be developed and training courses must be conducted.

Status. The radioactive materials inspection requirements in Section 15 were included in the Safety Permit NPRM (MC-92-4) in Section 8 which was published on June 17, 1993.

SEC. 16 SAFETY INSPECTORS—HIRING

Requirements. The law requires the Secretary to employ and maintain 30 or more inspectors above the number authorized for FY 1990. Ten of the inspectors must focus on radioactive material (RAM) activities, including point of origin inspections of high level RAM, and to the extent possible, other RAM. Of the additional inspectors authorized for RAM inspections, I is allocated to RSPA; not less than 3 are allocated to FRA; and not less than 3 are allocated to FHWA. The other 20 inspectors are to be allocated among RSPA, FHWA and FRA at the Secretary's discretion.

Status. The Secretary allocated RSPA one safety inspector to focus on promoting safety in the transportation of radioactive materials, including low level materials. A RAM inspector was hired, but subsequently resigned. RSPA intends to hire or assign another RAM safety inspector before the end of FY 1993.

The Secretary allocated FHWA 3 positions of the 10 radioactive material inspector positions; FHWA hired 1 RAM specialist and 2 hazardous materials specialists. Of the 20 general hazardous materials safety inspectors, the Secretary allocated FHWA 17 hazardous materials specialists in the field. All of those positions were filled by the end of FY 1991. With these additional positions, FHWA now has 35 hazardous materials inspector positions in the field and headquarters offices.

The Secretary allocated FRA 12 inspector positions authorized under section 16 of HMTUSA and requested that all positions be funded in FY 1992. Inspectors were allocated as follows: 4 hazardous materials, 2 motive power and equipment, 2 track, 2 operating practices and 2 signal and train control. These positions were funded and filled in FY 1992. Current Federal inspector staffing for the hazardous materials discipline is 20 percent higher than at the end of FY 1990 (43 vs. 36).

SEC. 17 PUBLIC SECTOR PLANNING AND TRAINING GRANT PROGRAMS

(1) Regulations

Requirements. The law requires the Secretary to issue regulations to allow: (1) States to receive grants to develop, improve, and implement emergency plans under the Emergency Planning and Community Right-To-Know Act of 1986, and determine the need for regional hazardous materials response teams, and (2) States and Indian tribes to receive grants for training public sector employees to respond to accidents and incidents involving hazardous materials.

Status. The Final Rule (HM-209) implementing the Public Sector Training and Planning Grants was published on September 17, 1992. As of August 1993, RSPA has awarded grants to 49 States and Territories for emergency planning and training. Awards to Indian tribes have been prepared and are expected to be disbursed in the near future.

(2) Public Sector Training Curriculum

Requirements. The law requires the Secretary to develop and update periodically a curriculum necessary to train public sector emergency response and preparedness teams. The Secretary must consult with the regional response teams established pursuant to the National Contingency Plan, persons who provide training for responding to accidents and incidents involving transportation of hazardous materials, and representatives of persons who respond to such accidents and incidents.

Status. In the Spring of 1991, RSPA established a curriculum development work group, composed of representatives of the Federal Interagency Coordination Group, to develop a national curriculum. The curriculum establishes training guidelines to measure the adequacy of courses, and, as is traditional, required hours and courses. The Federal Emergency Management Agency (FEMA) and RSPA drafted the curriculum with the assistance of the workgroup. The national curriculum will be used as a measuring stick for grant applications to help responders identify and obtain training to assist them in meeting Occupational Safety and Health Administration and Environmental Protection Agency regulations and National Fire Protection Association guidelines. The workgroup will also identify existing sources which provide information on available courses; support FEMA in its effort to establish dissemination procedures (which are required by HMTUSA), and establish mechanisms and timing for agency review to minimize duplication of effort. The national curriculum draft guidelines were completed on April 1, 1993, and are now in review.

(3) Minimization of Duplication of Federal Effort—Review

Requirements. The Secretary and the heads of other Federal departments, agencies and instrumentalities are required to review periodically all emergency response and preparedness training programs of those agencies for the purpose of minimizing duplication of effort and expense in carrying out such training programs and take such actions, including coordination of training programs, as may be necessary to minimize such duplication of effort and expense.

Status. The requirement is being performed by the Federal Interagency Coordination Group, consisting of the Department of Transportation, Federal Emergency Management Agency, Environmental Protection Agency, Occupational Safety and Health Administration, Department of Energy, and the National Institute of Environmental Health Sciences. It is an ongoing effort.

SEC. 18 HAZMAT EMPLOYEE TRAINING GRANT PROGRAM

Requirements. HMTUSA authorizes the National Institute of Environmental Health Sciences (NIEHS) to make grants to nonprofit organizations involved in training private sector hazmat employees.

Status. The FY 1993 DOT Appropriations Act limited funding for the grant program, including the NIEHS grants, to $11 million, and provided that funding shall be available only through the Secretary of Transportation. Since Section 106 of the Hazardous Materials Transportation Act requires private sector employers to train hazardous materials employees, DOT views provision of grant-funded training to the same employees as an unnecessary expenditure of Federal funds. DOT has elected to maximize funding to State grantees, who are the primary focus of the grant program.

SEC. 19 RAILROAD TANK CARS—REGULATIONS

Requirements. The law prohibits the use of railroad tank cars for the transportation in commerce of hazardous materials unless the air brake equipment support attachments comply with the standards for attachments set forth in Title 49 CFR, Parts 179.100-16 and 179.200-19, in effect on the date of enactment. This prohibition took effect in two phases: the first was the date of enactment (November 16, 1990) for Class A and B explosives and materials designated as poisonous by inhalation, and the second was July 1, 1991, for any hazardous materials.

Status. On October 8, 1991, FRA issued a Final Rule (RHMT-1) effective on October 8, 1991, prohibiting the transportation in commerce of all hazardous materials in tank cars with air brake support attachments that do not comply with the standards set forth in Title 49 CFR, Parts 179.100-16 and 179.200-19, that were in effect as of November 16, 1990.

SEC. 20 APPLICATION OF FEDERAL, STATE AND LOCAL LAW TO FEDERAL CONTRACTORS—REGULATIONS

Requirements. HMTUSA makes Federal contractors transporting hazardous materials or manufacturing, fabricating, marking, reconditioning, repairing or testing a package or container for use in the transportation of hazardous materials subject

to all applicable Federal, State, local, and Indian tribal regulations, except where preempted by the HMTA or other Federal law, in the same manner and to the same extent as any person engaged in such activities.

Status. On February 28, 1991, a Final Rule (HM-207) was published making Federal contractors subject to all applicable Federal, State, local, and Indian tribal regulations, except where preempted, in the same manner and extent as any person engaged in such activities.

SEC. 21 RAILROAD TANK CAR STUDY

Requirements. The law requires the Secretary to enter into a contract with an appropriate disinterested body for a study of (1) the railroad tank car design process, including specifications development, design approval, repair process approval, repair accountability, and the process by which designs and repairs are presented, weighed, and evaluated, and (2) railroad tank car design criteria, including whether head shields should be installed on all tank cars which carry hazardous materials. The Secretary is to report the results of the study to Congress.

Status. Funding for this study was not included in the FY 1991 Appropriations Act, but was included in the FY 1992 Appropriations Act. The Transportation Research Board (TRB) of the National Academy of Sciences initiated a study, funded by FRA, in FY 1992. A TRB committee has been formed and has held two meetings on the issues. The report to Congress is expected to be completed in September 1994.

SEC. 22 UNIFORMITY OF STATE MOTOR CARRIER REGISTRATION AND PERMITTING FORMS AND PROCEDURES—REPORT

Requirements. The law requires the Secretary to establish a working group to develop uniform forms and procedures for States to use in registering and permitting entities which transport hazardous materials over highways. The group will report to Congress within three years of enactment on its findings and recommendations on nationwide uniformity of hazardous materials transportation over highways. HMTUSA also requires the Secretary to issue regulations, implementing those recommendations with which he agrees, that are contained in the report.

Status. In 1991, FHWA established a working group to provide uniform forms and procedures for States' use in registering and permitting hazardous materials highway mode shippers and carriers and to make recommendations regarding base state registration/fee collection in a Final Report to the Secretary, to the Senate Commerce Committee, and to the House Public Works Committee. The Working Group (Alliance for Uniform Hazardous Material Procedures), which has met several times during the past two years, and met on May 23—25, 1993, in St. Louis, Missouri, to finalize recommendations to FHWA. The recommendations will include a model Base State Hazardous Materials Registration and Permitting System. The prototype form and complete Base State program are to be tested in a four-State (West Virginia, Ohio, Nevada, and California) two-year pilot program which began in July 1993. The deadline for the final Alliance report to Congress and the Secretary is November 16, 1993.

SEC. 23 FINANCIAL RESPONSIBILITY—REGULATION

Requirements. The law establishes a $5,000,000 minimum level of financial responsibility for hazardous materials carriers. The law allows the Secretary, by regulation, to reduce the $5,000,000 for any class of vehicles or operations for the 3 1/2 year period beginning on the effective date of the regulations or any part of such period if the Secretary finds that such reduction will not adversely affect public safety and will prevent a serious disruption in transportation service.

Status. The responsibility for issuing regulations addressing financial responsibility requirements for motor carriers under the Motor Carrier Safety Act of 1980, as amended, has been delegated to FHWA. Upon implementing financial responsibility requirements for motor carriers under the Motor Carrier Act, FHWA provided a phase-in period from July 1, 1981 until July 1, 1985, for implementation of the prescribed levels. Section 23 of HMTUSA also allows the reduction of the $5 million-level to not less than $1 million for transportation in the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands if the chief executive officer of such territory requests such a reduction. To our knowledge, no such request has been received by FHWA.

SEC. 24 FEDERALLY LEASED COMMERCIAL MOTOR VEHICLES—GUIDELINES

Requirements. The law amends the Motor Carrier Safety Act of 1984 to allow any State which receives Motor Carrier Safety Assistance Program funds to apply any regulations pertaining to commercial motor vehicles (CMV) safety to federally leased CMV's.

Status. Although the language in Section 24 is permissive, the FHWA will notify the States about the amended law so that they may address this in their upcoming legislative sessions.

SEC. 25 IMPROVEMENTS TO HAZARDOUS MATERIALS IDENTIFICATION SYSTEMS

(1) Regulations

Requirements. HMTUSA requires the Secretary to conduct regulatory proceedings to determine methods: (1) of improving the current system of placarding vehicles transporting hazardous materials, and (2) for establishing a central reporting system and computerized telecommunications data center that is capable of receiving, storing, and retrieving data concerning all daily shipments of hazardous materials; to identify hazardous materials being transported by any mode of transportation, and provide information to facilitate responses to accidents and incidents involving hazardous materials.

Status. RSPA issued an ANPRM (HM-206) on June 9, 1992, that addressed both placarding and a central reporting system and data center. RSPA received more than 200 comments. This rulemaking was delayed pending completion of a study by the National Academy of Sciences (NAS), which is required by Section 25(b) of the HMTUSA and is discussed in subsections (2) and (3) below.

(2) Central Reporting System and Computerized Telecommunication Data Center Study—NAS

Requirements. HMTUSA requires the Secretary to enter into appropriate arrangements with the NAS to conduct a study of the feasibility and necessity of establishing and operating a central reporting system and computerized telecommunications data center that is capable of receiving, storing, and retrieving data concerning all daily shipments of hazardous materials; that can identify hazardous materials being transported by any mode of transportation, and that can provide information to facilitate responses to accidents and incidents involving the transportation of hazardous materials.

Status. RSPA contracted with the NAS to conduct the study in the Spring of 1991. The report was completed and sent to Congress and the Secretary of Transportation on April 29, 1993.

(3) Review of NAB Study and Report to Congress

Requirements. The law requires the Secretary to review the report of the NAS and the results of rulemaking, prepare and submit to Congress a report summarizing the report and the results of rulemaking, together with the Secretary's recommendations concerning the establishment and operation of a central reporting system and computerized telecommunications center and the Secretary's recommendations concerning implementation of the recommendations contained in the NAS study.

Status. RSPA is reviewing the comments to the rulemaking docket (HM-206), as well as the NAS study, and will prepare and submit to Congress a report, no later than October 29, 1993, with the Secretary's recommendations.

SEC. 26 CONTINUALLY MONITORED TELEPHONE SYSTEMS—REGULATIONS

Requirements. The Secretary is required to initiate a rulemaking proceeding on the feasibility, necessity, and safety benefits of requiring carriers involved in the hazardous materials transportation industry to establish continually monitored telephone systems equipped to provide emergency response information and assistance with respect to accidents and incidents involving hazardous materials.

Status. RSPA included this issue in the ANPRM published on June 9, 1992.

SEC. 27 SHIPPER RESPONSIBILITY REPORT—REPORT TO CONGRESS

Requirements. The law requires the Secretary to submit a report to Congress on the safety benefits of a law requiring a shipper to share liability for costs, damages, and fees assessed against the motor carrier for bulk hazardous materials incidents, if the shipper has used a carrier with an unsatisfactory or conditional safety rating.

Status. The FHWA submitted the report to Congress on November 5, 1991. The report concluded that although a shipper responsibility law might marginally in-

crease pressure on carriers to operate safely, it is unlikely that the improvement would be significant. The financial responsibility regulations currently in effect adequately protect the traveling public from the risk of uncollectible judgments. The Department believes that the Motor Carrier Safety Act and HMTA will accomplish as much as, if not more than, a shipper responsibility law. The DOT has, therefore, concluded that the proposed shipper responsibility law is unnecessary.

SEC. 28 STATE PARTICIPATION IN INVESTIGATIONS AND SURVEILLANCE

Requirements. The law amended Section 206 of the Federal Railroad Safety Act of 1970 (FRSA) to permit state inspection and surveillance under any Federal regulation "related to railroad safety." The express intent of this amendment was to make the hazardous materials regulations issued under the HMTA one of the Federal railroad safety regulations covered by FRA's state participation program.

Status. On June 24, 1992, the FRA published a Final Rule, effective on July 24, 1992, revising the regulations in Title 49, CFR, Part 212, concerning State participation in railroad safety inspections and investigations with respect to the transportation of hazardous materials.

SEC. 29 RETENTION OF MARKINGS AND PLACARDS

Requirements. The law requires the Secretary of Labor to issue regulations to require any employer who receives a package or vehicle containing hazardous materials to retain markings, placards, labels, and other information required by the Hazardous Materials Regulations until the hazardous materials have been removed from the package, container, or transport vehicle.

Status. RSPA has requested the Department of Labor to make a direct reply to the Senate Commerce, Science and Transportation Committee's Subcommittee on Surface Transportation on the status of their rulemaking on the retention of markings and placards.

SHIPPER RATINGS

Question. Please provide DOT's view concerning the proposal made at the hearing by Dr. Rothberg of the Congressional Research Service to require DOT to develop, test, and implement a system to inform concerned parties of the safety performance and/or regulatory compliance of hazmat shippers.

Answer. We do not believe that such a system would provide any significant benefit. It would be very expensive to implement due to the vast number of shippers of hazardous materials. A safety rating system currently exists for motor carriers, and a large staff was employed for its implementation. Its purpose is to review and rate the safety performance of commercial motor carriers, including those who transport hazardous materials. Most accidents are due to driver error and, to a lesser degree, due to vehicle and road system failures. Seldom is the cause of a serious accident directly attributed to non-compliance on the part of a shipper. Furthermore, shippers represent a much more diverse population of entities than motor carriers, e.g., shippers of medical gases to hospitals, munitions to the Department of Defense, consumer goods in the wholesale and retail trade, and co-ops operated by farmer groups. It would be very difficult for DOT to establish a fair and equitable rating system that would not be subject to numerous challenges by shippers who may be aggrieved by the manner of its implementation.

FIBRE DRUMS

Question. The Committee is aware of at least one unresolved issue arising out of the new HM-181 packaging regulations—namely, the permitted use of fibre drums for transport of certain hazardous materials. Please discuss the Research and Special Program Administration's (RSPA) justification for moving to a performance-based safety standard for this type of packaging without making any affirmative finding the present use and experience with fibre drums is unsafe. Have these new international performance-based standards been scientifically validated? What is the standard to be applied to the pending exemption request in this area? When will RSPA issue a final ruling on reconsideration of this request?

Answer. The performance standards adopted under Docket HM-181 represent a culmination of an effort which began in 1968. A major purpose of Docket HM-181 was to enhance safety through better classification and packaging of hazardous materials and to promote flexibility and technological innovation in packaging. RSPA was concerned about the adequacy of packaging for certain hazardous materials, including those which pose environmental hazards. The minimal performance standards put in place are necessary to ensure that packagings can withstand the normal

transportation environment and survive non-catastrophic accidents, such as those which occur during handling. The performance-based standards adopted under Docket HM-181 are based on consensus standards established by transportation officials representing many nations worldwide participating in the work of the United Nations Committee of Experts on the Transport of Dangerous Goods.

The Hazardous Materials Transportation Act (HMTA) provides that an exemption may only be granted if the procedures provided will "achieve a level of safety (1) which is equal to or exceeds that level of safety which would be required in the absence of such exemption, or (2) which would be consistent with the public interest and the policy of the [HMTA) in the event there is no existing level of safety established." The "level of safety which would be required in the absence of (an) exemption" is established by the Hazardous Materials Regulations.

First-level action on the Fibre Drum Technical Council's (FDTC) request for an exemption has been taken. On August 9, 1993, RSPA's Associate Administrator for Hazardous Materials Safety denied the FDTC's application because it did not demonstrate that the fibre drums that are the subject of the application will achieve a level of safety at least equal to or greater than that established in the regulations. Prior to this action, on June 1, 1993, RSPA's Acting Administrator had vacated a January 12, 1993 decision denying FDTC's exemption application and remanded the matter to the Associate Administrator for Hazardous Materials Safety for a new decision. The Acting Administrator agreed with FDTC that an October 16, 1992 letter, in which FDTC had responded to other comments in the docket, should have been but was not considered in the evaluation of the exemption request. The August 9 decision was based on the full docket record, including the additional comments dated October 16, 1992.

Questions Asked by Senator Exon and Answers Thereto by Ms. McMurray

UNDERSTANDING REGULATIONS

Question. An article in the June 1993 issue of the Nebraska Trucker, as submitted for the record, suggested that the federal hazardous materials transportation (hazmat) regulations are hard to understand and are, in fact, in need of a complete rewrite. What is the Research and Special Programs Administration's (RSPA) response to this view? As the Department of Transportation (DOT) proceeds to implement HMTUSA, does RSPA believe that writing the regulations more clearly would lead to better voluntary compliance? Is there an education and outreach issue here?

Answer. The suggestion in an article published in the Nebraska Trucker (June 1993) that the Federal Hazardous Materials Regulations (HMR) are hard to understand and are in need of a complete rewrite is not new to RSPA. Indeed, RSPA fully recognized this condition years ago.

To remedy that situation, RSPA initiated a comprehensive revision of the Hazardous Materials Regulations in Docket HM-181 (47 FR 16268, April 15, 1982). The intended effect of the final rules published on December 20, 1991, is to:

- simplify and reduce the volume of the HMR;
- enhance safety through better classification and packaging;
- promote flexibility and technological innovation in packaging;
- reduce the need for exemptions from the HMR; and
- facilitate international commerce.

Through that action RSPA, reduced the volume of the HMR by approximately 25 percent (350 fewer pages in the Code of Federal Regulations). It is not entirely possible to eliminate complexity in regulations which must address legal, technical and operational concerns for classification, hazard communication, and packaging for thousands of hazardous chemicals. However, we believe that the new format and use of performance standards, rather than detailed design specifications, make the HMR more user-friendly.

RSPA has an education and outreach program designed to improve voluntary compliance by the regulated community. One recent product of that education and outreach program is RSPA's publication entitled "The 1992 Guide to Changes in the Hazardous Materials Regulations." This publication is the seventh module in a training package series developed for persons who must comply with the HMR. This training series is the product of a cooperative effort by Federal, State and private sector organizations. The modules are readily available to interested persons at a nominal fee.

RSPA's education and outreach program also includes participation in hazardous materials seminars/conferences sponsored by other Federal departments and agencies, and non-profit organizations like the Hazardous Materials Advisory Council and the Cooperative Hazardous Materials Enforcement Development (COHMED) or-

ganization. Also, RSPA's Transportation Safety Institute (TSI) conducts numerous hazardous materials training courses at its facility in Oklahoma City, OK, and other locations throughout the country, when appropriate, for compliance and enforcement personnel in State and Federal agencies.

TRAINING ISSUES

Question. What progress has RSPA made in establishing a single set of nationally accepted standards for hazmat incident response training? With respect to federal requirements, how will the final DOT training requirements coordinate with other training rules imposed by the Occupational Safety and Health Act in order to avoid unnecessary duplication and overlap?

Answer. A draft of the national curriculum guidelines has been completed by DOT and its interagency partners. The comments from the curriculum author team are being integrated into the document, and the guidelines draft will be available for wide distribution in Fall 1993. The guidelines link the Occupational Safety and Health Administration and National Fire Protection Association guidelines to ensure duplication and overlap do not occur. The national curriculum guidelines will be used by State grantees to qualify their courses for funding under the Hazardous Materials Transportation Act.

Question. In testimony at the hearing, representatives of the International Brotherhood of Teamsters and the Rail Labor Executives' Association asserted that present funding and support for actual hazmat training initiatives, as opposed to publishing and distributing guidebooks and training manuals, is not sufficient, and that more needs to be done. What are the views of RSPA in response to this assertion?

Answer. Congress provided $11.0 million in FY 1993 to conduct the various elements of the grant program, and stipulated that of that amount, $700,000 would be available for curriculum development, and not more than $950,000 would be available to print and distribute the Emergency Response Guidebook (ERG). RSPA elected to use $500,000 for the ERG, the minimum amount necessary to continue this widely used tool for the emergency response community. A total of $8.9 million was authorized in FY 1993 to fund the planning and training grants. Approximately $3.5 million of the $8.9 million has been awarded.

HMTUSA GRANT PROGRAM FUNDS

Question. How will RSPA ensure that HMTUSA grant program funds allocated to a particular State will obligated in a timely manner by that State?

Answer. RSPA maintains extensive outreach on a frequent basis with its State grantees. The first grant awards were issued in May of 1993. In the Fall of 1993, RSPA and an interagency team will monitor the progress States make against their grant application plan milestones and provide technical assistance to ensure State grantees are making progress on their grants.

DOT PREEMPTION DETERMINATIONS

Question. Concern has been expressed regarding numerous pending applications for DOT administrative determinations of preemption. In the FY 1993 DOT appropriations measure, Congress provided funding for additional legal staff at RSPA. What help will these additional personnel provide in resolving this backlog of preemption determinations? What other actions will DOT take to address this situation?

Answer. RSPA has nine pending preemption determination applications. The two additional attorneys, together with existing staff, have been tasked to draft the requested preemption determinations. These same attorneys process about 150 hazardous materials enforcement cases each year and provide legal support for the regulatory and other activities of RSPA. They also will be actively involved in judicial review of preemption determinations. RSPA intends to issue preemption determinations in almost all of the nine pending matters by the end of CY 1993. In addition, RSPA has established timetables and performance standards for more prompt processing of future applications.

SHIPPER/CARRIER REGISTRATION

Question. The Committee understands that, to date, DOT has not brought any enforcement actions against shippers or carriers of hazardous materials for failing to register as required under HMTUSA, although RSPA has indicated that more than 100 entities may have not registered as required under the law. When does

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DOT intend to commence enforcement proceedings against entities which are not in compliance with the registration requirements.

Answer. On February 16, 1993, RSPA, through its Associate Administrator for Hazardous Materials Safety, sent a memorandum to the DOT operating administrations establishing a policy of referring documentation to them for appropriate enforcement action for violations of the hazardous materials registration program. Two referrals have been sent to the Federal Railroad Administration (FRA), and more than 100 referrals have been sent to the Federal Highway Administration (FHWA). The FHWA has since instituted a detailed and targeted program aimed at carriers and shippers failing to register. While no cases have been completed, several carriers have been cited for failing to register. In other instances, compliance reviews have been implemented or scheduled, and some carriers have registered as a result of FHWA visits or contacts. In still other cases, FHWA has determined that carriers and/or shippers were registered but under different names or addresses. The FRA, similarly, has established a routine policy of enforcing the registration requirements while inspecting rail carriers and shipper/consignee facilities. As a result, over 300 RSPA "Notices of Requirement to Register" forms have been issued by FHWA, FRA, and State enforcement officials; follow-up actions are expected shortly.

It is RSPA's intent to join with FHWA and FRA, as appropriate, to publicize completed actions and announce penalties levied through the issuance of press releases to encourage registrations. A systematic and active process is on-going within DOT, including an outreach effort with State officials, to identify potential non-registrants and to force compliance.

RETENTION OF SHIPPING PAPERS

Question. Please provide DOT'S view concerning the proposal raised at the hearing by Dr. Paul Rothberg of the Congressional Research Service concerning the retention of shipping papers by shippers and carriers, as a possible initiative to improve the safety of the transportation of hazardous materials.

Answer. RSPA agrees that Dr. Rothberg's proposal to require shipping papers to be retained for a reasonable period of time could facilitate enforcement of the Hazardous Materials Regulations and will propose a rulemaking to that effect.

QUESTIONS ASKED BY SENATOR EXON AND ANSWERS THERETO BY MR. HARVISON

Question.(Driver Training): Within the context of Mr. Skelton's testimony (referred to in the question), I have every confidence that the "hazmat" training, required by Department of Transportation docket HM-126F, will be completed in timely fashion by the members of this Association. Regrettably, it is a fact that some tank truck carriers choose not to belong to associations such as NTTC; and, (it can be assumed) do not even know of the existence of HM-126F. Of course the problem, here, is the lack of enforcement—not the efficacy of the regulations.

Answer. It is important for the Committee to note that virtually all of the elements of the DOT regulations served to simply formalize employee training programs which have been "on going" for years preceding HM-126F. in other words, the net impact of the new rules will be that carriers have had to develop administrative and "paperwork" regimes to document that the training has been completed (for enforcement and compliance purposes). There are some exceptions. For instance, carriers now must train certain clerical employees whose duties would involve the preparation of shipping documents.

Question. (Grade Crossing Safety): With reference to the tragic crossing accident in Florida, NTTC members currently interpret existing Federal Motor Carrier Safety Regulations (at 49 CFR 392.10) to require drivers of commercial motor vehicles not to proceed onto a grade crossing unless "* * * the coast is clear".

Answer. Therefore, while a legislative mandate might be redundant to existing regulation, NTTC would have no objection. It should be noted, however, that the incident in Florida may have involved circumstances of an unusual nature. Apparently, the highway, on which the crossing is located, was undergoing repair and travel had been reduced to one lane, and a "flagman" was controlling traffic. Reports indicate that the truck may have been "hung up" on the crossing due to the actions of the flagman. Whether such a circumstance could have been avoided by the existence of specific legislation is speculative, at best.

Question. (Rollover Protection Devices): NTTC is aware of (and has reviewed) relevant findings of the National Transportation Safety Board with respect to such devices. We believe that the Board's findings centered on whether or not the engineering design of one cargo tank manufacturer met the applicable specifications of the U.S. Department of Transportation (at 49 CFR 178.340-8(c).

Answer. As requested by the NTSB, NTTC alerted its members to the situation and has met with representatives of the Truck Trailer Manufacturers Association to assure that the problem was confined to one manufacturer.

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